

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12307 of 2022

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Rajani Kant Ojha, Son of Late Laxman Ojha, Resident of Village and P.O. - Chhota Singhanpura, Police Station - Simri, District- Buxar at present posted as Block Welfare Officer, Arwal, and Deputed in the office of Deputy Director SC and ST Welfare Department, Patna. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of SC and ST Welfare, Government of Bihar, Patna.
2. The Secretary SC and ST, Department of Welfare, Govt. of Bihar, Patna.
3. The Joint Secretary, Scheduled Caste and Scheduled Tribe Welfare Department, Govt. of Bihar, Patna.
4. The Director SC and ST Welfare, Department, Govt. of Bihar, Patna.
5. The District Magistrate, Shivhar, Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate Mr. Uday Shankar Pandey, Advocate
For the Respondent/s	:	Mr. Md. Raisul Haque, SC-10

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 12-05-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner in the present case is seeking the following reliefs:-

“(i) For issuance of writ of certiorari and thereby to set aside the transfer and posting order issued vide memo No. 1873 dated 28.06.2022 by the Respondent No. 03 i.e. the Joint Secretary, schedule case and schedule tribe welfare Department, Govt. of Bihar, whereby and whereunder the petitioner’s service have been transferred from the post of In-Charge District Welfare Officer, Shivhar to the post of Block Welfare Officer, Arwal, with deputation in the office of Deputy Director, Welfare, Patna.



(ii) For issuance of writ(s), order(s) or direction (s) commanding the Respondents to grant and post the petitioner on the due post of deputy director Welfare whereon his junior colleagues have been posted.

(iii) And further issue a direction to the Respondents to pay all consequential benefits and reliefs as your Lordships may deem fit and proper.”

Brief facts of the Case

3. It is the case of the petitioner that he was appointed in the year 1989 on the post of Block Welfare Officer under Welfare Department, Government of Bihar. As per Service Rules of Block Welfare Cadre, the hierarchy in ascending order are Block Welfare Officer – Sub-Divisional Welfare Officer – District Welfare Officer – Deputy Director Welfare Officer.

4. It is the case of the petitioner that after serving at several places, he was lastly transferred and posted as In-Charge, District Welfare Officer, Khagaria from where he was posted as In-charge, District Welfare officer, Sheohar vide Annexure ‘1’ to the writ application.

5. It is stated that at Sheohar, he was served with a show cause notice and after his reply, the Disciplinary Authority imposed a punishment of Censure upon the petitioner. The case of the petitioner is that when he filed a protest petition before the Respondent No. 4 i.e. Director, SC and ST, Welfare Department, in retaliation, the Department has come out with transfer and posting



order issued vide Memo No. 1873 dated 28.06.2021 which is Annexure '8' to the writ application. By this order, the petitioner has been transferred to the Basic Grade Post of Block Development Officer, District Arwal with a further direction that the petitioner service is deputed at the office of Deputy Director Welfare at Patna.

6. It is further case of the petitioner that the petitioner has rendered continuous service of more than 30 years but has neither been granted any regular promotion nor has been given benefits of Assured Career Progression/Modified Assured Career Progression (in short 'ACP/MACP') for the reason best known to the Department. The contention is that without granting regular promotion, the Department is adopting pick and choose method in the matter of posting of officers in the Block Welfare Cadre to the post of In-Charge, District Welfare Officer and even on the post of Deputy Director, Welfare.

7. It is alleged that the persons junior to the petitioner have been posted as In-Charge, District Welfare Officer or the Deputy Director, Welfare. In this regard, the petitioner has raised his grievance for which he has been saddled with this order of transfer on a lower post.



Stand of the State

8. A counter affidavit has been filed on behalf of the Respondent Nos. 1 to 4. It is stated that in the interest of government work and administrative exigencies, the petitioner has been transferred from Sheohar district where he was holding the post of In-Charge, District Welfare Officer to the office of Block Welfare Office, Arwal with deputation in the office of Deputy Director, Welfare, Patna. It is admitted that while posted as In-charge, District Welfare Officer, Sheohar, he would be entitled for only the admissible pay scale as applicable to the transferred officers but the petitioner cannot claim pay scale of regular promotional post. It is admitted that the petitioner on date substantively continues to the Block Welfare Officer only and no promotion whatsoever has been granted to him.

9. A supplementary counter affidavit has also been filed on behalf of the Respondent Nos. 1 to 4.

10. Learned counsel for the State is unable to controvert that there is no specific denial of the averments made in Paragraphs '15', '16', '17', '18' and '19' of the writ application. In these paragraphs, the petitioner has alleged that because of the protest made by him, he has been transferred and further that without granting regular promotion, the Department is doing



posting of the Block Welfare Cadre officers on pick and choose basis.

11. Learned counsel is unable to demonstrate from the records that there is any denial of the statement that the persons junior to the petitioner have been posted as In-Charge, District Welfare Officer or the Deputy Director, Welfare.

12. Learned counsel for the State has submitted that the petitioner has been posted as Block Welfare Officer at Arwal where the District Welfare Officer, Arwal is senior to him in the departmental provisional seniority list as contained in Annexures 'I' and 'J' of the supplementary counter affidavit.

Consideration

13. Having heard learned counsel for the petitioner and learned counsel for the State as also on the analysis of the pleadings on the record, this Court finds that there is no denial of the statement of the petitioner that the Department is engaged in posting of the officers in the Block Welfare Officer Cadre on pick and choose basis. Instead of granting regular promotion to the eligible officers from the cadre, the Department is making some of them as In-Charge and in the process, the persons junior to the petitioner have been made In-charge of the post of Deputy Director.



14. In such circumstance, this Court is of the considered opinion that the posting of the petitioner from the post of District Welfare Officer where he was discharging his duty as In-Charge, District Welfare Officer to the Block level Welfare Officer is malafide, it amounts to lowering down the petitioner from enjoying a status where he was discharging duty of a higher post, this has to be seen in the background of the fact that the juniors to him have been made In-Charge of the District Welfare Officer post. It is not the case of the respondent that the petitioner is not eligible to be considered for the promotional post.

15. Mr. Bipin Bihari Singh, learned counsel for the petitioner submits that in the Cadre Rules known as Bihar Scheduled Caste and Scheduled Tribe Welfare Officer Cadre Rules, 2010 (hereinafter referred to as “the Cadre Rules, 2010”), there are promotional avenues available to the petitioner but the Department is not considering the case of the petitioner and others for promotion and people are being made to retire even after service of 30 years without granting any promotion to the higher post. The Department is denying even the benefit of the Assured Career Progression on flimsy ground that the petitioner has not passed departmental examination.



16. Relying upon the Hon'ble Division Bench judgment of this Court in the case of **The State of Bihar and Ors. Vs. Sri Ram Subhag Singh (LPA No. 4 of 2021)**, learned counsel submits that in the said case, this Court has after going through the judgment of the Hon'ble Apex Court in **SLP (Civil) No. 782 of 2022** held that the writ petitioner was entitled for consideration for grant of due benefit under the ACP and MACP scheme without passing the departmental examination.

17. In the aforesaid view of the matter, this Court sets aside the impugned order as contained in Letter No. 1873 dated 28.06.2022 in so far as it relates to the petitioner and directs the respondents to immediately reinstate the petitioner in the same position from where he was brought to Arwal.

18. The respondents are also directed to initiate the process of promotion as per the Cadre Rules, 2010 and in case, the petitioner is found entitled for promotion, the same be allowed to him within a period of three months from the date of receipt/production of a copy of this order.

19. In case, there is no promotional avenue available to the petitioner, his case for grant of ACP/MACP shall be considered keeping in view the judgment of the Hon'ble Division Bench in



the case of **Sri Ram Subhag Singh** (Supra) within the same period and consequential order shall be issued accordingly.

20. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	13.05.2023
Transmission Date	

