

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14741 of 2017

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Uday Paswan Son of Sohray Paswan, Resident of Village- Champapur, P.S.-
Bakhtiyarpur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
4. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Flood Control and Water Drainage, Water Resource Department, Government of Bihar, Sinchai Bhawan, Patna.
5. Engineer-in-Chief, Headquarter, Water Resource Department, Bihar, Sinchai Bhawan, Patna.
6. The Joint Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
7. The Joint Secretary Management, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
8. The Deputy Secretary Management, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
9. The Under Secretary Management, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
10. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat, Patna.
11. The Secretary Expenditure, Finance Department, Government of Bihar, Old Secretariat, Patna.
12. Accountant General (A and E), Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ratnesh Kumar Singh, Adv.
For the Respondent/s : Mr. Sanjay Kumar, A.C. to AAG-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 13-03-2023 Heard Mr. Ratnesh Kumar Singh, learned counsel for

the petitioner and Mr. Sanjay Kumar, learned A.C. to AAG-4 for

the State.

2. The petitioner in the present case is seeking the



following reliefs:-

- “(i) calling the decision of Water Resources Department, Government of Bihar, Patna & Finance Department, Government of Bihar, Patna debarring the petitioner from financial benefits of retrospective promotion and quashing the same.
- (ii) grant consequential financial benefit of retrospective promotion with interest @ 12 % and cost as granted by the Hon’ble High Court in LPA No. 552 of 1992.
- (iii) grant consequential financial benefit of ACP/MACP w.e.f. 01.01.2009 along with interest @ 12 % @ cost thereof.
- (iv) grant any other relief to the petitioner which petitioner is entitled in the facts and circumstances in this case.”

3. During the pendency of the writ application since the respondents have come out with Memo No. 2808 dated 27.11.2017, the petitioner has brought an application giving rise to I.A. No. 7141 of 2018 seeking to challenge the said memo. There is no objection to the interlocutory application seeking amendment to the writ application, hence, it is hereby allowed. The statements made therein and the reliefs prayed in the application shall be treated as part and parcel of the writ application.

4. The petitioner has by filing the interlocutory application added the following reliefs:-

- “(v) to quash the memo no. 888 dated 29.05.2017 issued under the signature of Deputy Secretary (Management), Water Resource Department, Bihar, Patna wherein the due date of promotion mentioned in the Para-2 column 5 of memo no. 2808 dated



27.11.2017 pursuant to the opinion of Finance Department and Law Department, Government of Bihar, Patna after 11 years of issuance of promotion order and in violation of High Court's orders, undertaking and principle of Natural Justice."

5. Learned counsel for the petitioner submits that the matters relating to promotion of the petitioner was pending consideration for a long time. One Shankar Bhagwan Prasad who was similarly situated with the petitioner was granted promotion vide notification no. 2525 dated 17.06.2005 (Annexure '8' to the writ application) but by a notification as contained in Memo No. 7/विविध-12-1062/2015 (Annexure '17' to the writ application) the monetary benefits of the promoted post was sought to be restricted w.e.f. the date of issuance of the notification of promotion vide Notification No. 2525 dated 17.06.2005. Annexure '17' was subjected to a challenge by said Shankar Bhagwan Prasad in CWJC No. 7245 of 2017. A learned Writ Court quashed the said notification by which the benefit of the promoted post was restricted w.e.f. the date of notification. The learned Writ Court held that the said petitioner will be treated to have been promoted from 01.01.1998 and he cannot be deprived of his salary from the date he was granted promotion.

6. It is submitted that the order passed in CWJC No. 7245 of 2017 has been complied with and it is evident from the



statements made in paragraph '8' of the supplementary counter affidavit filed on behalf of respondent nos. 3 to 9.

7. Learned counsel submits that in respect of the petitioner a similar order was issued vide Annexure '20' to the Interlocutory Application No. 7141 of 2018. It is submitted that the case of the petitioner is squarely covered by the judgment of the learned Writ Court passed in CWJC No. 7245 of 2017. In his case also, he would be entitled for his salary etc. to the post of Assistant Engineer w.e.f. the date he was promoted to the said post vide notification No. 2808 dated 12.11.2007.

8. Learned counsel further submits that the petitioner would also be entitled for the consequential benefits of ACP/MACP (Assured Career Progression Scheme Rules, 2003 and Modified Assured Career Progression Scheme Rules, 2005). He has also prayed for the consequential reliefs in respect of the interest as has been granted by this court in LPA No. 552 of 1992.

9. Learned counsel has further relied upon the orders of this Court in CWJC No. 9098 of 2009 and LPA No. 1077 of 2012. It is pointed out that the order dated 11.02.2015 passed in LPA No. 1077 of 2012 was challenged in SLP (Civil) No. 21436 of 2015. In the said case, the Hon'ble Supreme Court vide order



dated 07.07.2017 directed the State Government to remove the anomaly of Salary between directly appointed Assistant Engineer and the Assistant Engineer appointed by way of Promotion but till date the Government has not removed the anomaly.

10. Learned counsel for the State does not dispute the contention of the petitioner that his case would be squarely covered by the judgment of the learned Writ Court in the case of Shankar Bhagwan Prasad versus The State of Bihar and Others.

11. In aforesaid view of the matter, it would be just and proper to quote the statements made in paragraph '8' of the supplementary counter affidavit filed on behalf of the respondent Nos. 3 to 9 wherein the answering respondents have admitted that in compliance of the order dated 03.08.2018 passed in CWJC No. 7245 of 2017 (Shankar Bhagwan Prasad Vs. The State of Bihar & Ors.) and other identical cases, monetary benefit of promotion has been allowed to some persons. Paragraph '8' reads as under:-

“That it would be pertinent to mention that in compliance of order dated 03.08.2018 passed in C.W.J.C. No. 7245 of 2017 (Shankar Bhagwan Prasad Vs. The State of Bihar and others) and other identical cases, monetary benefit of promotion to the post of Assistant Engineer has been allowed to some persons with effect from 01.01.1998 vide notification



contained in memo no. 216 dated 29.01.2009 since by the said order, the Hon'ble Court had been pleased to set aside the notification contained in memo no. 490 dated 27.03.2017."

12. Further, this Court finds that as regards the claim of ACP/MACP, the respondents have made statements in paragraph '11' of their counter affidavit. Paragraph '11' is being reproduced hereunder for a ready reference:-

"That so far as claim for grant of A.C.P./M.A.C.P. is concerned, it is stated that the answering respondents have taken steps for calling for vigilance clearance/A.C.R. of the petitioner from other departments in which he was deputed. Thereafter his case will be placed before the Departmental Screening Committee for consideration."

13. This Court finds that the claim of the petitioner that he is identically situated with Shankar Bhagwan Prasad is not being contested, hence, in the opinion of this Court, this petitioner would be entitled for similar reliefs which have been granted to said Shankar Bhagwan Prasad.

14. The impugned order as contained in Annexure '20' is hereby quashed. The respondents are directed to consider the case of the petitioner and grant identical reliefs/benefits to him as have been granted to Shankar Bhagwan Prasad and other identical persons.

15. Needless to say that the claim of the petitioner towards the consequential benefits of the ACP/MACP, if not



already considered, would liable to be considered in terms of the statements made in paragraph ‘8’ of the supplementary counter affidavit as also other submissions and judicial orders, if any on the subject and the monetary benefit whatsoever is found payable to the petitioner shall be paid within a period of four months from the date of communication of this order.

16. This writ application is, therefore, allowed in the aforementioned terms.

(Rajeev Ranjan Prasad, J)

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