

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1391 of 2019

In
Civil Writ Jurisdiction Case No.561 of 2018

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1. The State Of Bihar through the Principal Secretary, Rural Works Department, Bihar, Patna
 2. The Secretary, Rural Works Department, Bihar, Patna.
 3. The Chief Engineer (I), Rural Works Department, Bihar, Patna.
 4. The Superintending Engineer, Rural Works Department, Work Circle, Gaya Rural Works Department, Government of Bihar.
 5. The Executive Engineer, Rural Works Department, Works Division, Nawada.

... .. Appellant/s

Versus

Dinesh Kumar Singh S/o Late Ram Sharan Singh Resident of Village- Nathanpura, P.O.- Kadirganj, P.S.- Nawada, Distt.- Nawada

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16246 of 2013

Dinesh Kumar Singh S/O Late Ram Swaroop Singh Resident Of Village - Mathanpura, P.S - Kadirganj, District - Nawadah

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Chief Engineer Rural Works Department Govt. Of Bihar, Patna
3. The Superintending Engineer Rural Works Department, Works Division, Gaya
4. The Executive Engineer, Rural Works Department, Work Division, Nawadah

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1391 of 2019)

For the Appellant/s : Mr .Prabhat Ranjan AC To GP 6

For the Respondent/s : Mr. Devendra Prasad Singh, Advocate

(In Civil Writ Jurisdiction Case No. 16246 of 2013)

For the Petitioner/s : Mr. Raj Kumar, Advocate

For the Respondent/s : Mr. S.Raza Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 15-01-2024

Re: L.P.A. No. 1391 of 2019

The present L.P.A. is filed on behalf of the State in assailing the order of the learned Single Judge dated 21.08.2018 passed in C.W.J.C No. 561 of 2018.

2. Core issue involved in the preset lis is whether Respondent - Dinesh Kumar Singh is entitled to pay-scale attached to the post of Junior Accounts Clerk / Class III post from 27.10.1997 till 26.08.2017 or not? Initially, he was holding the post of class-IV. For want of personnel in class-III category, Respondent - Dinesh Kumar Singh was asked to discharge the duties of the post of Junior Accounts Clerk / Class III Post with effect from 27.10.1997 and it was discontinued on 26.08.2017.

3. Learned counsel for the appellant submitted that Respondent - Dinesh Kumar Singh is in the cadre of Class-IV and he was only placed on incharge arrangement against the class – III post from 27.10.1997 to 26.08.2017. Therefore, he is not entitled



to salary attached to the class-III post. To this extent learned single Judge has committed error while passing the order on 21.08.2018 in C.W.J.C. 561 of 2018. It is also submitted that respondent has been extended charge allowance in the light of Bihar Service Code.

4. Per contra learned counsel for the respondent submitted that charge allowance has not been paid, if it is disputed in that event respondent is permitted to approach concerned authority by submitting a detail representation. If such representation is submitted the concerned authority shall examine whether charge allowance has been paid from time to time during the intervening period from 27.10.1997 to 26.08.2017, if it is not paid necessary calculation shall be made and disbursed the same in favour of the respondent within a period of three months from the date of receipt of this order, failing which he is entitle to interest at the rate of six per cent per annum. However, we made it clear that Respondent - Dinesh Kumar Singh is not entitled to pay-scale or any other



service condition attached to the class-III post, since he has not entered the cadre of class-III post in accordance with the relevant rules of recruitment governing the class-III post. In other words, he had lien over the class-IV post for the purpose of service condition except claim of charge allowance against higher post in the light of relevant provision of the Bihar Service Code. To this extent order of learned single Judge dated 21.08.2018 passed in C.W.J.C No. 561 of 2018 stands modified.

5. L.P.A allowed in part.

Re: C.W.J.C No. 16246 of 2013

1. In the instant petition petitioner has prayed for the following relief(s):-

*1. That the petitioner is invoking the writ jurisdiction of this Hon'ble Court for issuance of appropriate writ/writs, order/orders, direction/directions commanding upon the respondent authorities for the following reliefs:-
i) For direction upon the respondent authorities particularly respondent no. 3 to grant promotion to the petitioner on class III post in view of his entitlement and direction issued by*



the Chief Engineer, Rural Works Department govt. of Bihar, Patna vide his letter no. 1246 dated 08.04.2013.

ii) For further direction upon respondent no. 3 to act accordingly after getting roaster clearance for the post of Accounts Clerk and to place the matter of the petitioner before the departmental promotion committee constituted in chairmanship of divisional commissioner for grant of promotion to the petitioner on the post of Accounts Clerk in light of different notifications issued by State of Bihar in this regard.

iii) For any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case.

2. Core issue involved in the present lis is whether petitioner is entitled to promotion to the Cadre of Class-III post or not?

3. Even though, petitioner is eligible to be promoted to the class-III post, he was not promoted among others obviously for the reasons that there was stay order of the Apex Court with reference to reservation policy in some other matter.

4. Learned counsel for the Respondent – State submitted that respondents have prepared a list of



Class- IV employees to be promoted to the Class-III post in which petitioner name is at serial no. 1. Therefore, the concerned respondent - authority is hereby directed to examine the date of eligibility of the petitioner for promotion to Class-III post and promote him if he is otherwise eligible and such action shall be taken within three months from today. If he is entitle from retrospective date in that event he be promoted retrospectively, since on incharge basis he was holding class – IV post for about two decades.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

