

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13460 of 2007

- 1.1. Pratibha Mishra (Widow) W/o Late Binod Kumar Mishra Resident of Village and P.O.- Barachakia, P.S.- Chakia in the district of East Champaran at Motihari, at present resident of Flat No.- 134, Block No.- 16 Prem Chandara Marg, P.O.- Rajendra Nagar, P.S.- Kadamkuan, Distt.- Patna.
- 1.2. Shantanu Kumar Mishra, Mentally retarded Son of Late Binod Kumar Mishra Represented through his mother as guardian and next friend, resident of Village and P.O.- Barachakia, P.S.- Chakia in the district of East Champaran at Motihari, at present resident of Flat No.- 134, Block No.- 16 Prem Chandara Marg, P.O.- Rajendra Nagar, P.S.- Kadamkuan, Distt.- Patna.
- 1.3. Vipul Kumar Son of Late Binod Kumar Mishra Resident of Village and P.O.- Barachakia, P.S.- Chakia in the district of East Champaran at Motihari, at present resident of Flat No.- 134, Block No.- 16 Prem Chandara Marg, P.O.- Rajendra Nagar, P.S.- Kadamkuan, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner cum Secretary, Home (Police) Dept. Govt. of Bihar, Old Secretariat, Patna.
3. Inspector General (C.I.D.), Old Secretariat, Bihar, Patna.
4. The Director, Forensic Science Laboratory, Bihar, Patna.
5. Director Regional, Forensic Science Laboratory Muzaffarpur, District-Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Verma, Advocate
	:	Mr. Suman Kumar Verma, Advocate
	:	Mr. Anish Kumar, Advocate
	:	Mr. Amresh Kumar Mishra, Advocate
	:	Miss. Ayushi Singh, Advocate
	:	Mr. Nitesh Kumar, Advocate
For the Respondent/s	:	Mr. Sitaram Yadav, GP-16
	:	Mr. Yatindra Narayan, AC to GP-16

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

29 24-06-2024 Heard learned counsels appearing on behalf of the

petitioners and learned counsels appearing on behalf of the

State.

2. The petitioners have *inter-alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:

“That this present writ application is being filed for issuance of appropriate writ in the nature of certiorari to quash the order dated 30.07.2005 said to be issued in compliance of order dated 22.03.2005 passed by this Hon'ble Court in C.W.J.C. No. 7607/1999 and also for issuance of directions to the respondents to give benefit of promotion to the post of deputy director with effect from 3.9.88 and also for direction to the respondents to make payments of retirement benefits with all consequential benefits of promotion as the petitioner has retired from service on 31.07.2001 on amongst other the following grounds :-.

- (i) For that the impugned order dated 30.07.2005 is not in accordance with law and without considering the fact about 4 post of Deputy Directors had already fallen vacant due to promotions of Deputy Directors belonging to General Category who were promoted on the post of Addl. Director with effect from 21.01.93.
- (ii) For that the respondents have failed to consider the law of de-reserving the posts of reserved category posts on non availability of candidate of reserve category for promotion and after 2nd transaction of promotion no candidate of reserved category was available in the light of circular no. 11601 dated 20.10.82 and as amended vide memo no. 11/ AA-1 02-84 appointment 253 dated 18.04.85.
- (iii) For that the respondents have passed the impugned order for getting rid of consequences of contempt proceeding by this Court but have failed to consider real issue involved in the case of petitioner in light of law as well as specific directions of this Court which they succeeded in their game by order dated 13.11.06 passed; by this Hon'ble Court in M.J.C. No. 673/06.
- (iv) For that the facts stated in counter affidavit filled by respondents in C.W.J.C. no. 7607/99 were answered in the rejoinder filled by the petitioner in aforesaid writ petition regarding availability of 4 post of General Category falling vacant due of promotion and three reserve category posts also became available for general category in accordance with law to be filled up at the time of promotion as 2nd transaction to reserve category in case of non availability of reserved category candidate which has not been examined by respondents at the time given of passing impugned order and has simply reproduced the fact given by them in counter affidavit.
- (vi) For that the impugned order is violative of Article 14 and 16 of the Constitution of India and he is deprived from fundamental right of equality before law by the arbitrary and illegal impugned order
- (vii) For that the respondents have wrongly and

incorrectly stated about giving similar scale of Deputy Director by way of giving time bound promotion but has failed to take in to account that the scale of pay of Deputy Director was fixed at Rs. 3000-4500 where as due to time bound promotion to petitioner the pay scale of Rs. 2400-4150 only was fixed which shall be evident from memo no. 3 PRC 002/92/781 issued by finance department on 8.12.96 and the same has been implemented by Govt. and time bound promotion given to petitioner has already been with drawn with effect from 01.01.96.

(viii) For that the pay scale of Deputy Director was further revised with effect from 1.01.96 by resolution dated 8.02.99 and the pay scale was fixed at Rs. 10000-15200 but the petitioner was not granted benefit of promotion to the post of Deputy Director rather he was given basic scale of Rs. 6500-10500 and after retirement on 31.01.2001 the petitioner is being paid pension and other benefits on the aforesaid scale of Rs. 6500-10500.”

3. The original petitioner (deceased now) for the similar reliefs had approached this Court by filing CWJC No.7607 of 1999, which was disposed of *vide* order dated 22.03.2005. The grievance of the petitioners is that in compliance of the order dated 22.03.2005, the authority has not considered the case of the original petitioner and he was made to retire from service on 31.07.2001. The original petitioner belonged to the General Category and stood at serial no. 7 in the gradation list and, as such, he became entitled for promotion, as four posts were available for General Category candidates. However, the original petitioner or his substituted heirs have not brought on record the representation, which has been filed in compliance of the order passed by this Court in support of their claim.

4. The admitted facts are that the original petitioner

became entitled to be promoted on the post of the Deputy Director w.e.f. 03.09.1998 and record shows that no Departmental Promotion Committee meeting was held, nor the petitioners have been able to bring on record, as to whether, the authorities failed to consider the case of the original petitioner for promotion, rather the petitioners admit that the original petitioner finds his place at serial no. 7 in the gradation list, prepared for the General Category candidates. It is also admitted by the petitioners that 4 posts in General Category remained vacant till the original petitioner had retired in the year 2001. Learned counsel for the petitioners has relied on paragraph no.8 of the supplementary counter affidavit, filed on behalf of respondents, to contend that in the year 2001, the proposal for roster clearance for 4 posts were initiated due to retirement of two persons and, as such, the denial by the Authorities to promote the petitioner can only be considered to be misconceived and misleading.

5. Considering the fact that the original petitioner has admitted that his name appeared at serial no.7 in the gradation list, therefore, even assuming that two persons may have retired from service before the original petitioner, had retired on 31.07.2001, the case of the petitioners could not have

been considered by the Authorities because another candidate was at Serial No. 6. I find no infirmity in the impugned order contained in Annexure-6.

6. Accordingly, the writ petition stands disposed of.

(Purnendu Singh, J.)

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