

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.837 of 2016

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Bharat Prasad Singh, Son of Late Shridhar Singh, Resident at C/o- Laxman Prasad Singh, resident of Mohalla:- Birla Colony near F.C.I. Godown south east corner, P.O. & P.S. Phulwarisharif, District:- Patna.

... .. Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary, Animal Husbandry and Fisheries department, Govt. of Bihar, New Secretariat, Patna.
3. The Principal Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar Old Secretariat, Patna.
4. The Commissioner, Commercial Tax Department, Government of Bihar, Patna.
5. The Joint Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Old Secretariat, Patna.
6. The Law Secretary, Law Department, Government of Bihar, Old Secretariat, Patna.
7. The Finance Commissioner, Finance Department, Government of Bihar, Patna.
8. The Director, Animal Husbandry Department, Govt. of Bihar, New Secretariat, Patna.
9. The Under Secretary, Advocate General Office, Bihar, Patna.
10. The Accountant General (A&E), Accountant General Office, Bir Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shankar Kumar
For the Respondent/s : Mr.Sc7-Mithilesh Kumar Pathak

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 31-07-2024

In the instant petition, the petitioner has prayed for the following reliefs:-

“1. That the present writ petition is being preferred assailing validity and correctness of order under memo no. 16966 Patna dated 10.12.2014 by authority of Principal Secretary, Government of Bihar refusing his claim by



rejecting representation in response to order dated 24.01.2014 passed by this Hon'ble Court under C.W.J.C. No. 8740 of 2001 directing concern authority for enquiry on facts supplied by him and in case they find that other identical employees in similar circumstances allowed to continue in Secretariat on post of Secretariat Assistant and avail consequential benefit then for purposes of parity similar order must be passed for him also. However, concern authority ignoring compassion/compare the cases of those who are identical and similarly situated and names supplied to them and additionally ignoring the provisions under law circular/guidelines order under challenged was passed which gives the smell of biasness, arbitrariness. Under command of constitution and also discrimination although it is prohibited under command of constitution, as well as further prayer for removal of discrimination reversing order under challenged in present writ petition and directing to maintain equity being theme of constitution and provides same and similar treatment and benefit and comply constitutional obligation and to pay entire pensionary benefits attached to the post with statutory interest and for other necessary relief/reliefs on basis of facts and circumstances of case enumerated and stated hereinafter.



2. Core issue involved in the present *lis* is whether petitioner is entitled to confirmation from the date of his stated to be ad hoc promotion to the post of Assistant from the post of Routine Clerk namely with effect from 28.09.1985 or not? The petitioner has not been extended the benefit of confirmation in the light of Section 3 of The Assistants of the Secretariat and Attached Offices Joint Cadre Act, 1989 (for short Act, 1989) or not?

3. Merely using the word ad hoc in the promotion order dated 28.09.1985 and thereafter, the same has not attained finality even before his date of retirement on 31.01.2015. In other words, respondents have extracted work of the petitioner from the post of Assistant from 28.09.1985 till his retirement on 31.01.2015. It is necessary to reproduce Section 3 and Section 9 of Act of 1989 and it reads as under:-

3. Constitution of Joint Cadre.-

Notwithstanding anything contained to the contrary in any judgement, decree or order of any court or any rule or circular the posts of the Assistant of the Secretariat and its attached offices are constituted in one joint cadre with effect from 30th August, 1988. All the Assistants of the Secretariat and its attached offices shall become members of the joint cadre of the Assistants and promotion of the Assistants to the higher posts shall hereinafter be made on the basis of their place in the joint cadre and the gradation list so prepared irrespective of the department/attached offices where such posts exists.

9. Validity of appointment, promotion and confirmation.-

Notwithstanding anything contained to the contrary in any



judgement, decree or order of any court or any rule or circular, all appointments and promotions of Assistants to higher posts and their confirmations in various Secretariat departments and attached offices made upto 30th August, 1988 on the basis of extant Government circulars/rules, etc. shall be deemed to have been validly made as if the Government decision, dated the 27th May, 1967 read with the Finance Department memo no. 7929-F, dated the 3rd July, 1967 and memo, no. 9571-F, dated the 24th July, 1967 were not in existence and shall be deemed that such a decision was never taken and that such circulars were never issued.

4. Combined reading of ad hoc promotion to the post of Assistant from the Routine Clerk on 28.09.1985 read with Section 9 of the Act, 1989, the petitioner was deemed to be confirmed in the Assistant post.

5. In fact, respondents in all fairness for the purpose of promotion to the post of Assistants, they should have prepared seniority list of Routine Clerk read with the method of recruitment to the post of Assistant. If it is 50% by direct recruitment and 50% by promotion in that regard they should have verified the cadre strength of Assistants and quota for direct recruitment and promotion should have been fixed thereafter, they should have operated the seniority list of Routine Clerk read with the reservation in promotion, if any. The above exercise has not been undertaken by the Respondents as on 28.09.1985, the date on which petitioner was stated to be promoted on ad hoc basis to the post of Assistant.

6. The official respondents have not appraised this



Court to the extent that as on 28.09.1985 they had prepared final seniority list of Routine Clerk so as to draw inference that for promotion to Assistant post irrespective of petitioner and others, they have operated such final seniority list for the purpose of promotion to the post of Assistant. Even to this day, they have not undertaken any exercise in preparing final seniority list of Routine Clerk and undertaking review of promotion. The present litigation is pending consideration for the last about 08 years and the fact that the petitioner has attained age of superannuation and retired from service on 31.01.2015. Thus, the petitioner has made out a case. The impugned order dated 10.12.2014 stands set aside. The petitioner is deemed to be confirmed in the post of Assistant from the date he was appointed on 28.09.1985 read with the provisions of the Act, 1989.

7. The concerned Respondents are hereby directed to extend all services and monetary benefits. In this regard, the concerned Authority is hereby directed to fix the pay of the petitioner attached to the post of Assistant with effect from 28.09.1985 and grant annual increments from time to time, revision of pay, if any, and re-fixation of pay & pension. This exercise shall be undertaken in the form of Chart so as to



understand that petitioner has been extended annual increment from time to time, revision of pay, re-fixation of pay and pension from time to time. In this regard, necessary difference of amount shall be calculated and disbursed in favour of the petitioner within a period of 03 months from the date of receipt of this order. If the Respondents failed to comply this order, in that event, petitioner is entitled to litigation cost and it is quantified at Rs. 25,000/- (Rs. Twenty Five thousand). Cost shall be paid to the petitioner within a period of 06 months.

8. Writ petition stands allowed.

(P. B. Bajanthri, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2024
Transmission Date	NA

