

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12850 of 2013

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Kashi Nath Prasad Singh, Son Of Rameshwar Singh, Resident Of Village -
Nisharpur, P.S. - Rampur Chouram, District - Arwal

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Engineer-In-Chief, Road Construction Department, Bihar, Patna
4. The Deputy Secretary, Road Construction Department, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhu Nath Pathak, Advocate
For the State	:	Mr. Prabhakar Jha, GP 27

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-09-2024

Heard Mr. Prabhu Nath Pathak, learned counsel
appearing on behalf of the petitioner; Mr. Prabhakar Jha, learned
GP 27 for the State.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraph No.1 of the writ petition:-

*“That by this application, the Petitioner
is invoking the writ jurisdiction of this Hon'ble Court
in the nature of rule of appropriate writ and writs for
consideration of promotion to the post of Assistant
Engineer w.e.f. the date of promotion the same to his
immediate junior, such as, Ram Ekwel Gupta and
others, who were promoted to the post of Assistant
Engineer on 07-07-2008 vide Notification No.8808 (S)
dated 07-07-2008 issued by the Deputy Secretary,
Road Construction Department, Bihar, Patna but the
same has not been given to the Petitioner due to non-*



inclusion of the name of the Petitioner in gradation list of Junior Engineers of 2003 which was subsequently in the gradation list of Junior Engineer even then the said promotion was not given and hence, denied of promotion to the petitioner is wholly discriminatory.”

3. Learned counsel appearing on behalf of the petitioner submitted that altogether 94 juniors to the petitioner were promoted on the post of Assistant Engineer without considering the case of the petitioner, who is entitled for being promoted at least from the date his juniors were given promotion with effect from 07.07.2008. Learned counsel further submitted that the Departmental Promotion Committee, headed by Bihar Public Service Commission had put the case of the petitioner under sealed cover, considering the fact that the petitioner was under suspension in view of charges contained against the petitioner and thereafter the petitioner was awarded punishment of withholding of three increments with cumulative effect, as contained in Memo No.2834(E) dated 03.06.2011 (Annexure 6), which was subject matter before this Court in CWJC No.4962 of 2012. The Hon'ble Court after hearing the parties having found the action to be arbitrary and perverse so far as the punishment was inflicted on the petitioner *vide* memo no.2834 (E) dated 03.06.2011 was quashed *vide* order dated 09.04.2012. Learned counsel further informs that the petitioner



has brought the said order on record by way of Annexure 7. In spite of the fact that punishment order has been quashed, the case of the petitioner has not been considered for granting him promotion at least from the date his juniors have been given promotion, i.e., 07.07.2008. Learned counsel further submitted that during the pendency of the present writ petition, just to deny the rightful promotion to the petitioner, the petitioner was served with a fresh charge memo contained in Memo No.110 dated 11.05.2015 and the same will not come in a way for considering the case of the petitioner as subsequent to the order passed by this Court, quashing the penalty order, as contained in Annexure 6, the petitioner was facing no disciplinary action and by delaying the case of the petitioner for being considered to be promoted, the authorities have acted in a very illegal manner against the principle of equity.

4. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner was given charge memo in the year 2013, contained in Memo No.1659 dated 12.03.2012 and thereafter, the petitioner was found to be involved in a scam along with other employee, who was served with a show cause and after giving sufficient opportunity, penalty order has been passed by withholding of two increments with cumulative effect



from 11.05.2015, contained in Annexure A to the counter affidavit.

5. Having considered the rival submissions made on behalf of the parties, as well as, the pleadings made in the writ petition and the counter affidavit filed on behalf of respondent no.4, I don't find any averment controverting the claim of the petitioner in the present writ petition, so far as any action was taken against the petitioner after quashing of the impugned order, contained in Annexure 6 to the writ petition, the only action which was required to be taken by the appropriate authority was to grant due promotion to the petitioner from the effective date, the juniors were promoted to the post of Junior Engineer to Assistant Engineer with effect from 07.07.2008 and on which date, the petitioner was not facing any departmental proceeding or any penalty order or was involved in any other case. The counter affidavit only relates to certain subsequent event, which has taken place during the pendency of the present writ petition which happened in the year 2012 and the penalty order dated 03.06.2011 withholding of two increments with cumulative effect having already quashed vide order dated 09.04.2012 passed in CWJC No.4962 of 2012, I find it proper to direct the authorities to consider the relief, as prayed for in



the present writ petition in view of the fact that the said order had already lost its force. The authorities are required to consider the case of the petitioner, who has claimed his entitlement for being promoted from the date juniors under his category have been given due promotion, i.e., 07.07.2008, which is much early to the Memo No.110 dated 11.05.2015.

6. The petitioner, if so desire, may challenge the impugned order which has subsequently been inflicted upon him, as contained in Memo No.110 dated 11.05.2015 by availing appropriate remedy in accordance with law.

7. The writ petition is, accordingly, disposed of.

8. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2024
Transmission Date	NA

