

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1386 of 2018

In
Civil Writ Jurisdiction Case No.6894 of 2011

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Md. Wasimuddin, MA, M.Com son of Late Salimuddin, Assistant Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna presently posted at BIADA Regional Office, Large Industrial State, Barari, Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Industrial Development Commissioner, Industries Department Bihar at New Secretariat, Patna.
2. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The Secretary, Bihar Industrial Area Development Authority at Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Chairman, Minority Welfare Commissioner, Old Secretariat, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Mahesh Prasad Singh, Adv.
For the BIADA : Mr.Ajit Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 18-04-2024

In the present L.P.A. the appellant has assailed the order of the learned Single Judge dated 27.06.2018.

2. In the instant appeal, appellant has prayed for following relief :-

“That this appeal is directed against the Order of Hon’ble Mr. Justice S. Kumar dated 27.06.2018 in C.W.J.C. No. 6894



of 2011 whereby the claime of the Petitioner for notional Promotion from – 6.12.1977 on the post of Assistant, Further Selection grads, Section Officer and on higher Post in the hierarcky of Promotion between 26.08.76 to 19.06.2003 and between 19.06.2003 to 31.1.2014 of the Cader of Assistance has been denied. Even undisputed Claim of appellant to be promoted on Vacant and Sanctioned Post of Section Officer which became vacant on 30.04.1997 not considered by the respondent has not been considered in the impugned order.”

3. The learned Single Judge has committer error in not taking note of basic and fundamental document for the purpose of claiming promotion to the post of Section Officer and Executive Director / Deputy Secretary.

4. Matter was heard from time and again it is necessary to re-produce order dated 28.02.2024 and 28.03.2024 which reads as under:-

I.A. No. 01 of 2020:

Heard I.A. No.01 of 2020.

2. For the reasons stated in the application read with affidavit, delay of 54 days in filing the above L.P.A. No.1386 of 2018 stands condoned.

3. Accordingly, I.A No.01 of 2020 stands allowed.

L.P.A. No.1386 of 2018:

4. The present L.P.A. is pending consideration for the last about 6 years.

5. Learned counsel for the Bihar Industrial



Area Development Authority is not in a position to apprise this Court with the L.P.A. and C.W.J.C. papers. It is submitted that L.P.A. papers have not been furnished on behalf of the appellant. Therefore, appellant is hereby directed to furnish copy of the L.P.A. papers to the learned counsel for the Bihar Industrial Area Development Authority during the course of the day.

6. The Managing Director, Bihar Industrial Area Development Authority is hereby directed to file counter affidavit to the L.P.A. within a period of four weeks from today failing which he is liable to pay cost of Rs.50,000/- to the appellant.

7. The Managing Director, Bihar Industrial Area Development Authority is requested to depute an official who is well conversant with the matter with all relevant materials.

8. It is to be noted that the grievance of the appellant is that he is entitled to be promoted to the post of Section Officer and to the post of Executive Director/Deputy Secretary. In such an event, what is the mode of selection or promotion to the aforementioned posts. If it is by seniority- cum- merit in that event whether any seniority- cum-merit list has been prepared so as to verify the eligibility of the appellant. All these material information is required to be examined to decide the present lis. If these materials are not placed on record in that event we are compelled to pass adverse orders against the Managing Director, Bihar Industrial Area Development Authority.



9. Re-list this matter on 27.03.2024.

Pursuant to our previous order, Mr. Ravi Prakash, I.A.S., Executive Director (South), is present in the Court.

2. Respondents have not complied the order dated 28.02.2024 to the extent Rules of Recruitment governing the post of Section Officer and Executive Director/Deputy Secretary. They have produced one Policy Decision dated 19.06.2003 to the extent that whatever certain posts were dying cadre as on 19.06.2003. At the same time, on instructions, learned counsel for the respondents submitted that as on 19.06.2003, no one was holding the post of Section Officer or Executive Director/Deputy Secretary. The feeder cadre to the Section Officer is Assistant. The appellant is at serial no.1 in the Assistant Seniority list. That apart, he is serving the respondents' organization as an Assistant from the year 1978. Next promotional cadre to the Assistant is Section Officer. In between 1980 to 2003 what would be the position in respect of filling up of the post of Section Officer/Executive Director/Deputy Secretary are required to be examined only with reference to the method of recruitment and it has not been placed on record. Learned counsel for the respondents submitted that the appellant has been provided time bound advancement in order to overcome the promotion. Such a contention cannot be acceptable for the reasons that when promotional opportunity is available to the appellant to the post of Section Officer and further for the post of Executive Director/Deputy Secretary, the respondents



are not in a position to apprise this Court what was the mode of recruitment to the aforementioned posts. If the aforementioned information is not furnished, we have to draw inference that the appellant was entitled to promotion to the aforementioned post with reference to Dying Cadre Policy Decision dated 19.06.2003 to the extent that as on 19.06.2003, the appellant was fully eligible for the aforementioned posts in view of the fact that the appellant stood at Sl. No.1 in the feeder cadre to the post of Section Officer, namely, Assistant from the year 1978.

3. Re-list this matter on 15.04.2024.

5. Despite providing sufficient time to the respondents, the respondents have not apprised with reference to method of recruitment to the post of Section Officer and Executive Director / Deputy Secretary. On the other hand, they are harping on the fact that the appellant has been provided time bond promotion as and when he completed ten years of service in the cadre of Assistant. In fact, from the perusal of record, it is evident that appellant is senior most in the Assistant Cadre who stands at S.No. 1. Thereafter, the official respondents have not pointed out to the extent that who are all promoted before taking policy decision to the extent that the aforementioned post was dying cadre. Before policy decision, in respect of dying cadre is concerned, whether name of the petitioner or his seniors have been considered while promoting to the post of Section Officer



and Executive Director / Deputy Secretary. In fact, if there are any hurdle in respect of granting promotion to the petitioner or not, in such circumstances, the official respondent should have under taken review of promotion with reference to method of recruitment to the post of Section Officer and Executive Director / Deputy Secretary read with relevant seniority list as on the date of occurrence of vacancy for the aforementioned post. On the other hand, it is evident that there is no iota of evidence that seniors to appellants have been promoted. Therefore, appellant has not been promoted and seniors have occupied the post Section Officer and Executive Director / Deputy Secretary as on the date of dying cadre declared by the State or policy decision of the official respondents. Therefore, respondents have committer error in not considering the name of appellant.

6. These are all material information that has not been taken note of by learned Single Judge while rejecting the appellant's writ petition C.W.J.C. No. 6894 of 2011. Accordingly, order of the learned Single Judge stands set aside. C.W.J.C. No. 6894 of 2011 stands allowed.

7. Concerned respondents / Competent Authority to appoint / promote to post of Section Officer and Executive



Director / Deputy Secretary shall examine service particulars of the petitioner read with method of recruitment to the post of Section Officer and Executive Director / Deputy Secretary, vacancies during the intervening period till policy decision of dying cadre and relevant seniority list. If seniority list is not prepared in respect of Assistant at relevant point of time, in that event, necessary seniority list shall be prepared and thereafter determine whether petitioner is entitled to be promoted to the post of Section Officer and Executive Director / Deputy Secretary or not ?

8. The above exercise shall be undertaken by the competent authority - official respondent within the period of six weeks from the date of receipt of this order. Thereafter, necessary speaking order shall be passed and communicated to the appellant. If the appellant is entitled to Section Officer and Executive Director / Deputy Secretary. Consequently, his pay is required to be re-fixed in the cadre of Section Officer and Executive Director / Deputy Secretary from the date he was eligible for promotion and calculate arrears of pay and pension and disbursed the same. If he is not other wise eligible in that regard reasoned speaking order shall be passed as to why appellant is not eligible to be promoted to the post of Section



Officer and Executive Director / Deputy Secretary with reference to method of recruitment and with reference to the aforementioned post read with seniority list and vacancies of the aforementioned post before the policy decision of declaring those cadres as a dying cadre.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

