

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6611 of 2018

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1. Yogendra Prasad Singh and Anr son of Late Matukdhari Singh resident of House No. 1/10, Vivekanand Marg, North S.K. Puri, Boring Road, Opposite A.N. College, Patna, District - Patna.
 2. Kapildeo Yadav son of Late Kamleshwari Prasad Yadav resident of 68 Nehru Nagar, Patna - 800013.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bih
3. The State of Bihar through Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The State of Bihar through Principal Secretary, General Administration Department, Government of Bi
5. The Deputy Secretary, Road Construction Department, Government of Bihar.
6. Engineer in Chief, Road Construction Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pranav Kumar, Adv.
For the Respondent/s : Mr.Syed Ikbali Ahmad -SC20

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 04-03-2024 Heard learned counsel for the petitioners and learned counsel for the State.

2. Counsel for the petitioners submits that the present writ petition has been filed for directing the respondents to grant pay protection as the Juniors to the petitioners have been promoted to the post of Superintending Engineer. The further prayer has been made to declare and hold that Rule 4(ii) of Bihar State Employees condition of service conditions (Assured



Carrier Progression Scheme) Rules, 2003 is not applicable in case of the petitioners as well as to grant all consequential benefits to the petitioners after granting pay protection in accordance with law entitle to other similarly situated persons.

3. Counsel for the petitioners submits that petitioners are superannuated Engineers of Road Construction Department and appointed as Junior Engineer in the year 1973 and has cleared AMIE or equivalent degree in terms of the Rule prescribed.

4. Counsel further submits that in the present case, both the petitioners are engineers and have obtained a B.Sc. (Civil Engineer) degree from recognized institution and obtained necessary approval from the appointing authority in the year 1978 & 1980 respectively. He submits that the other similarly situated person, namely, Krishna Kumar Sinha has moved before this Hon'ble Court in C.W.J.C. No.9098 of 2009 for denial of his second ACP in the rank of Assistant Engineer which was decided vide Annexure-2 in his favour. Against the said decision, the department has preferred LPA No.1077 of 2012. In the said LPA, the present petitioners have filed intervention application bearing I.A. No.6704 of 2014 which was allowed and they were added as party in the LPA.



The said LPA was finally decided vide order dated 11.02.2015 passed in LPA No.1077 of 2012.

5. Counsel further submits that the petitioners have filed representation before the Secretary, Road Construction Department for compliance of order passed in the said LPA order by their common representation dated 02.03.2015 on which no action has been taken by the department, thereafter they again filed representation.

6. Counsel further submits that they have also preferred SLP(C) No.21436 of 2015 before the Hon'ble Supreme Court challenging the part order of LPA No.1077 of 2012 dated 11.02.2015. He submits that the said SLP was decided vide order dated 07.07.2017 by which the SLP was dismissed, but respondent was directed to take steps as per the direction of the High Court passed in Hon'ble LPA Bench within a period of 2 months, if not already taken.

7. Counsel further submits that in compliance of the said order, the authority has passed order vide letter No.111 dated 16.01.2018, but the said order has been passed for Krishna Kumar Sinha and Kameshwar Prasad Singh who were the petitioners in the C.W.J.C. and not in favour of the petitioners. It has also not been communicated to the petitioners



when the petitioner got information about the said letter then it was found that only one line statement has been inserted in the said order which has been passed for one Krishna Kumar Sinha. Thereafter, the petitioners have preferred the present writ petition to pass separate order in the present writ petition.

8. Counsel for the State has filed a counter-affidavit and submits that a separate order has been passed vide letter No.5004 dated 24.05.2019 which is Annexure-C of the counter-affidavit.

9. Counsel submits that petitioners have challenged the said order dated 24.05.2019 in I.A. No.01 of 2023 for amendment of prayer. This I.A. No.01 of 2023 has been allowed on which the counsel for the State has no objection, and as such, the relief of challenging the order dated 24.05.2019 passed by the respondent, has been the subject matter of the present writ petition also.

10. Counsel for the petitioners submits that reasoning for the case of the petitioners has already been decided in Letter No.111 dated 16.01.2018, but only communication of the said letter has not been made to them and it is due to this reason, the fresh letter dated 24.05.2019 has been passed and communicated to the petitioners vide Annexure-C to the



counter-affidavit.

11. Upon hearing the parties and going through the documents, it transpires to this Court that no separate order has been passed by the respondent in compliance of the order made by the Hon'ble Supreme Court passed in **SLP No.21436 of 2015 dated 07.07.2017** in the case of **Kameshwar Prasad Singh & Ors. Vs. the State of Bihar and Ors.** which states as follows:-

“Insofar as the claim of the petitioner for grant of first ACP is concerned, we find that the High Court has rightly rejected the same as, in the meantime, the petitioner was promoted to the post of Assistant Engineer from the post of Junior Engineer. At the same time, we find that the High Court has, in the impugned order, noted the anomaly which has arisen in view of the position in which the petitioner is placed and is pointed out in the following manner:

"So far financial progression is concerned, this financial progression is personal promotion therefore, the anomaly now is that though the writ and petitioner is senior to the direct recruit he is in the pay scale of the Executive Engineer, whereas, his juniors who were direct recruits to the post of Assistant Engineer are now in the pay scale of the Superintending Engineer.

Normally, these are met by stepping up of the pay scale to protect the seniors but that in



our view could be a matter for the State to consider it at the first instance.

It would be for the State to examine whether in fact such anomaly has arisen and if it has arisen then the State would have to immediately take steps to remove this anomaly and under no circumstances apart from the circumstances where the senior suffers a disqualification can the senior receive or be in a pay scale lower than his juniors."

Learned counsel for the respondent is not in a position to point out as to whether the respondent has taken any steps in removing the said anomaly.

Thus, while dismissing this special leave petition, we direct the respondent to take steps as per the direction of the High Court within taken. period of two months, if not already taken."

12. In the eyes of law, the said order has been passed for Krishna Kumar Sinha merely by adding the name of petitioners, shall not be a proper course of disposal particularly when the petitioners were party to the said SLP, and hence, this writ petition is hereby disposed off directing the petitioner to file fresh representation before the respondent No.2 and the respondent No.2 is directed to pass fresh order in the light of the Hon'ble Supreme Court orders for the petitioners and the order vide letter dated 24.05.2019 which is basically not an order in



view of the Court and basically a communication, is hereby set aside.

13. The respondent No.2 is also directed to pass a reasoned and speaking order for the petitioners within 90 days from the date of production of the order.

14. With the aforesaid direction, the present writ application is hereby disposed off.

(Dr. Anshuman, J.)

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