

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.904 of 2021

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Birendra Kumar Sinha Son of Brahamdeo Sinha Resident of Village-
Bandpar, P.S.- Islampur, District- Nalanda.

... .. Petitioner/s

Versus

1. Zila Parishad, Patna through its Deputy Development Commissioner-cum-
Chief Executive Officer, Zila Parishad, Patna.
2. The Deputy Development Commissioner-cum- Chief Executive Officer, Zila
Parishad, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Adv.
For the Respondent/s : Mr. Nikesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-01-2024

Heard Mr. Mrigendra Kumar, learned counsel
appearing on behalf of the petitioner and Mr. Nikesh Kumar,
learned counsel for the Zila Parishad, Patna.

2. The petitioner, who superannuated on 28.02.2018
from the post of Junior Engineer, Zila Parishad, Patna, has filed
the writ petition seeking a direction upon the respondents to
ensure payment of all his retiral dues as well as other payable
dues, which accrued on account of revision of Pay Commission,
payment of arrears of Time Bound Promotion, ACP, along with
interest over the delayed payment.

3. It is submitted on behalf of the petitioner that
admittedly the petitioner superannuated in the year 2018,



however, on account of intervention of this Court, during pendency of the present writ petition, payment of part provident fund, gratuity, earned leave and arrears of salary/pension on account of 4th and 6th Pay revision has only been accorded to the petitioner. Till date, the petitioner has not been accorded the benefit of First Time Bound Promotion as well as the 1st and 2nd ACP.

4. The learned counsel for the petitioner, while drawing the attention of this Court to paragraph no. 11 of the counter affidavit filed on behalf of the Zila Parishad, submitted that the, very reason for not assigning the benefits of First time Bound Promotion, is said to be in absence of confidential remarks; thus, for that the petitioner cannot be blamed. He submits at the Bar that in any view of the matter the petitioner was appointed on 17.01.1983 as a Junior Engineer vide Memo No. 367 dated 17.01.1983 and as such, he is entitled for the benefit under the First Time Bound Promotion after completion of 12 years of his service.

5. He further, referring to the order issued by the Zila Parishad, Patna as contained in Memo No. 376 dated 01.01.2019, submitted that though a decision has been taken (Annexure-4 to the writ petition) to ensure benefit of financial



progression under the Assured Career Progression Scheme, but till date the same has not been accorded. He next submitted that the petitioner is also entitled for the officiating allowance in view of Memo No. 577 dated 28.03.2008, whereby the petitioner has been directed to discharge the work of two posts.

6. At this juncture, learned counsel for the Zila Parishad has submitted that the petitioner was appointed on the recommendation of the Selection Committee of the Zila Parishad on 24.01.1983 and on 01.12.1984 on account of certain irregularities, he was put under suspension in contemplation of departmental proceeding till 05.05.1987, resulting into withholding of two annual increments with cumulative effect, apart from, the petitioner has been allowed only officiating allowance during suspension period. Referring to the other averments in the counter affidavit, he further submits that so far the admissible dues of the petitioner is concerned, the same has already been accorded, moreover, the benefit of ACP is not applicable to the employees of the Zila Parishad and till date this benefit has not been accorded to any of the employee. He further submits that regarding the officiating allowance, the same is neither admissible nor has been paid to any employee of the Zila Parishad. He lastly submitted that the petitioner had



earlier moved before this Court for the same and identical relief in CWJC No. 15046 of 2011 which stood dismissed on account of non-prosecution. Thus, the present writ petition is not maintainable being barred by *res judicate*.

7. This Court has heard the submissions advanced on behalf of the respective parties. So far maintainability of the writ petition is concerned, this Court does not find any merit as there was neither any decision on merit nor any adjudication on the earlier point of time, thus, there shall be no applicability of principle of *res judicata*. This issue has also been dealt with in various cases, recently the Hon'ble Apex Court in the case of ***Prem Kishore & Ors. vs. Brahm Prakash & Ors.*** reported in ***2023 LiveLaw (SC) 266***, has elaborately explained the general principle of *res judicate*.

8. In the case of ***Daryao vs. The State of U.P. (AIR 1961 SC 1457)***, it was held that when the petition filed in the High Court under Article 226 is dismissed not on merit but because of laches of the party applying for the writ or because the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to the subsequent petition under Article 32.

9. It is well settled principle of law that the principle



of *res judicate* will be applicable only when the issues have been decided and it has attained finality. If it is not discernible from the order that the case has been dismissed on merit the bar of *res judicate* will not prevail either in filing the writ petition before the Supreme Court or the High Court.

10. So far the remaining claim of the petitioner as stated hereinabove, this Court finds that so far the First Time Bound Promotion is concerned, the same cannot be denied in absence of confidential remarks, which is required to be done by the superior authorities of the Zila Parishad, hence the same must be considered by the respondent, Zila Parishad after taking note of service record of the petitioner, in accordance with law, within a period of eight weeks.

11. So far other grievance, regarding ACP, 7th Pay Commission as well as officiating allowance(s) are concerned, the petitioner is at liberty to file an appropriate representation before the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Patna, who shall also consider the same and pass a reasoned and speaking order, preferably within the afore-noted stipulated period.

12. Needless to observe that in case any of the identically situated employees have been accorded the benefit of



ACP and 7th Pay Commission, the same benefit should be accorded to the petitioner also.

13. This disposes the present writ petition.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2024
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