

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23050 of 2011

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Phekan Das S/o Late Nanhaku Das, R/o Village - Bahadurpur Shish Mahal
Apartment, PS- Bahadurpur, Distt.- Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Patna.

... .. Respondents

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Appearance:

For the Petitioner	:	Mr. Shailesh Kumar Sharma, Advocate
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the State	:	Mr. Sanjeet Kumar Singh, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-04-2024

Heard Mr. Shailesh Kumar Sharma, the learned counsel for the petitioner, Mr. Sanjay Pandey, the learned counsel appearing on behalf of the Bihar Public Service Commission and Mr. Sanjeet Kumar Singh, the learned AC to AAG-6 appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs:

(i) For issuance of an appropriate writ for quashing the memo no. 719 dated 10.05.2010



issued under the signature of Joint Secretary, Water Resources Department, Government of Bihar, Patna, whereby the case of the petitioner for consideration of promotion to the post of Chief Engineer has been rejected by the Water Resources Department.

(ii) For issuance of an appropriate writ for quashing the letter no. 1019 dated 28.06.2010 issued under the signature of Joint Secretary, Management, Water Resources Department, whereby the claim of the petitioner for payment of salary to the promoted post of Executive Engineer, w.e.f., the date of promotion has been rejected and also the payment of salary to the promoted post of Superintending Engineer with effect from the date of assuming of charge to the post of Superintending Engineer has also been rejected.

(iii) For issuance of an appropriate writ for commanding and directing the respondents to consider the case of the petitioner for promotion to the post of Chief Engineer, w.e.f., the date when he became eligible for promotion to the said post and provide consequential benefit thereof along with interest.

(iv) For issuance of an appropriate writ for commanding and directing the respondents to pay the salary of the promoted post of Executive Engineer, w.e.f., the date when the petitioner was promoted to the said post along with interest as the petitioner was promoted to the post of Executive



Engineer, w.e.f., 27.12.1986, but the salary was given from 1988 and also to pay the salary of Promoted Post of Superintending Engineer, w.e.f., the date he assumed the charge of Superintending Engineer.

(v) For issuance of writ / writs / order / orders or direction for which the petitioner shall be found entitled under the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that the petitioner joined in Water Resources Department as Junior Engineer in the year 1971 under the Schedule Caste reserved category and thereafter he was promoted to the post of Assistant Engineer, w.e.f., from 27.12.1978 and following that he was promoted to the post of Executive Engineer, w.e.f., 27.12.1986 and upon perusal of the promotion notification of the petitioner, it is evident that it was directed that the salary of the promoted post will be given w.e.f., the date of the assuming of the charge of the Executive Engineer.

4. Learned counsel for the petitioner submits that thereafter the petitioner was promoted to the post of Superintendent Engineer on current charge vide Water Resources Department notification no. 565 dated 13.07.1995, but even after this promotion, he was given his salary of the post of Executive Engineer only. In the year 2002, Water Resources



Department issued a regular promotion to the post of Superintending Engineer vide notification no. 8510 dated 14.12.2002 and at this stage due to pendency of proceeding against the petitioner, he was not given regular promotion to the post of Superintendent Engineer, although his juniors were promoted to the said post. Thereafter, in the year 2004, the petitioner was given regular promotion to the post of Superintendent Engineer, w.e.f., the date from which his juniors were promoted as contained in memo no. 8510 dated 14.12.2002 vide notification no. 3126 dated 14.09.2004.

5. Learned counsel for the petitioner submits that the petitioner was given salary to the promoted post w.e.f., 01.02.2001, but from perusal of the memo no. 8510 dated 14.12.2002, it appears that it was directed in the said notification that the eligible officers, who remain in continuous charge of Superintending Engineer will be given salary of the higher promoted post with effect from the date they assume the charge of Superintending Engineer. The petitioner was working on the higher post of Superintending Engineer, w.e.f., July, 1995, but he was not given a due salary of the promoted post of Superintending Engineer, w.e.f., July, 1995, although he was eligible for the said promotion much before 1995 itself.



6. The Water Resources Department has promoted the petitioner to the post of Chief Engineer in the Rural Development Department vide notification no. 4026 dated 03.08.2004 and since then the petitioner was continuously working to the post of Chief Engineer till the date of his superannuation, i.e., on 29.02.2008. The petitioner was given the charge of Chief Engineer on which the petitioner was continuously working till his superannuation, although the petitioner was given salary of Superintendent Engineer only. It is mentioned that the petitioner was eligible for the regular promotion to the post of Chief Engineer and post of Chief Engineer was also vacant.

7. The Water Resources Department has prepared a list of eligible candidates to be promoted to the post of Chief Engineer and the list of eligible candidates was submitted before the Bihar Public Service Commission (Hereinafter referred to as 'BPSC') and requested to fix a date of meeting of the Departmental Promotion Committee (Hereinafter referred to as 'DPC') for regular promotion to the post of Chief Engineer vide letter no. 1159 dated 10.07.2007 and the name of the petitioner was figured at serial no. 22 and in which the petitioner's due date of promotion to the post of Chief Engineer was mentioned



as on 01.02.2003. The meeting of DPC was held in which the name of the candidates was considered and recommended to the regular post of Chief Engineer, since the petitioner's name was not recommended and his name was not considered, although his juniors were recommended for promotion to the post of Chief Engineer and bare perusal of the recommendation of the BPSC, whereby the Superintending Engineers (Civil) of the Water Resources Department were promoted to the post of Chief Engineer. A large number of similarly situated juniors to the petitioner have been promoted to the post of Chief Engineer, but the promotion of the petitioner was not recommended and not considered in the DPC and petitioner was not promoted to the post of Chief Engineer, although he had fulfilled all the criteria of being promoted to the post of Chief Engineer.

8. Learned counsel for the petitioner submits that in the year 2006, the petitioner was also eligible on working on the higher post of Chief Engineer, but due to laches on the part of respondents, he was not promoted to the post of Chief Engineer. The petitioner was eligible for promotion, w.e.f., 01.02.2003 and his name was recommended to the DPC on 10.07.2007. When he was working to the post of Chief Engineer since August, 2004, but due to laches on the part of the respondents the name



of the petitioner was not considered in the DPC in time.

9. In view of the aforesaid, the petitioner is well entitled to be promoted to the post of Chief Engineer, w.e.f., the date when he became eligible and his name was recommended for the promotion. The petitioner had preferred a writ petition bearing CWJC No. 16962 of 2009 and the same was heard and disposed of vide order dated 29.01.2010 with a direction to the petitioner to file a representation before the authority concerned and it was further directed to consider the representation of the petitioner.

10. Learned counsel for the petitioner submits that in compliance of the order dated 29.01.2010 passed in CWJC No. 16962 of 2009, the petitioner has filed a representation annexing the order of this Hon'ble Court before the respondent no. 2 on 09.02.2010. The Water Resources Department vide its letter no. 1019 dated 28.06.2010 has been pleased to reject the claim of the petitioner with regard to the payment of salary to the promoted post of Executive Engineer and Superintending Engineer without assigning any reason and thereafter the Department passed a reasoned order contained in memo no. 719 dated 10.05.2010, whereby the claim of the petitioner for consideration for promotion to the post of Chief Engineer has



also been rejected without assigning cogent reason.

11. Learned counsel for the petitioner submits that petitioner has no other option but to move before this Hon'ble Court to prefer the contempt petition filed in MJC No. 4514 of 2010 and the same was disposed of vide order dated 11.02.2011.

12. Learned counsel for the State submits that a proposal for promotion to the post of Chief Engineer was sent to the BPSC vide Water Resources Department, Bihar vide letter no. 1159 dated 10.07.2007. In compliance of the Commission's letter no. 1188 dated 08.10.2007, a detailed consolidated list of the officers proposed for promotion was made available vide the Department's letter no. 2305 dated 19.12.2007 in which the name of the petitioner appeared at serial no. 22, but with a clear cut question mark on his availability for the said promotion and the remark entered in the remark column no. 22, which suggests that the quota of reservation for scheduled caste category for the said promotion is full and exhausted and hence in the light of the direction of the Personnel & Administrative Reforms Department contained in letter no. 1948 dated 06.06.2007 and the judgment of the Apex Court in Civil Writ No. 61 of 2001 in the case of *M. Nagraj & Ors. Vs. Union of India & Ors.*, which was disposed of vide order and judgment dated 19.10.2006, the



case of the petitioner cannot be considered for promotion.

13. Learned counsel for the State submits that on receipt of the proposal for promotion from the Administrative Department and after scrutiny of the same, the Commission requested the Department to send relevant papers, material records and information for holding meeting of the DPC.

14. It is most humbly submitted that as a stop-gap arrangement, the petitioner was posted as Superintendent Engineer (current charge) in his own pay scale of the Executive Engineer vide order no. 565 dated 13.07.1995 (Annexure-3 of the writ application). Later on, the petitioner was granted regular promotion to the said post w.e.f. the date of promotion of juniors to the petitioner, i.e., 01.02.2001 vide letter no. 3126 dated 14.09.2004 (Annexure-5 of the writ application), again as a stop-gap arrangement the petitioner was posted as Chief Engineer (current charge) in his own pay scale of the Executive Engineer vide letter no. 4026 dated 03.08.2004 (Annexure-6 of the writ application). The petitioner has superannuated from the said post w.e.f., 29.02.2008.

15. Learned counsel for the State submits that as per the Rules and instructions of the Finance Department, Government of Bihar, the petitioner was allowed salary of the



post of Executive Engineer and Superintending Engineer w.e.f., the date on which he had assumed the charge of the said post after being granted regular promotion to the said post. The payment of salary w.e.f., the due date of promotion is not permissible under the rules and the said date is mentioned in the notification of promotion only for the purpose of counting seniority of any employee. The notification of such posting that the employee will draw salary in its own pay scale admissible to his substantive post. As such, claim of the petitioner for grant of salary to the post of the Executive Engineer w.e.f., the due date of promotion and salary of the post of Superintending Engineer was rightly rejected by the Department.

16. Learned counsel for the State submits that in compliance of the order dated 29.01.2010 passed in CWJC No. 16962 of 2009, the claim of the petitioner for grant of regular promotion to the post of Chief Engineer was examined by the competent authority and it was found that in light of the order dated 09.01.2006 passed in CWJC No. 12644 of 2003 (*Awadhesh Prasad Singh Vs. the State of Bihar & Ors.*) as well as in the light of the instruction of the Personnel & Administrative Reforms Department, Government of Bihar vide letter no. 745 dated 05.02.2008 amended seniority list of



Superintending Engineers was published vide notification no. 1604 dated 01.07.2008, but prior to that the petitioner superannuated on 29.02.2008 and he could not be considered for promotion to the post of Chief Engineer. However, no person junior to the petitioner was granted promotion to the post of Chief Engineer during service period of the petitioner. The petitioner was not found eligible for the grant of promotion to the post of Chief Engineer and as such the claim of the petitioner was rejected by a reasoned order passed by the respondent no. 2.

17. Learned counsel for the State further submits that it would be pertinent to mention that due to pendency of the CWJC No. 12644 of 2003 (*Awadhesh Prasad Singh Vs. the State of Bihar & Ors.*) as well as due to 85th amendment of the Constitution of India, not a single promotion to the post of Chief Engineer could be granted to anyone from 2003 to 01.03.2009 and even several seniors to the petitioner could not get promotion to the post of Chief Engineer and as such the delay in promotion to the post of Chief Engineer was not a deliberate action of the respondent authority.

18. This Court is of the view that in light of the aforesaid stand of the respondent State, no case is made out for



interference of this Court.

19. There is no merit in the writ petition and accordingly the writ petition stands dismissed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2024
Transmission Date	NA

