

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12671 of 2024

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Chaudhary Rai, Son of Late Kuldeep Roy, Resident of Mohalla-New
Alkapuri Road No.-6, P.S.-Gardanibagh, Distt-Patna.

.. ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Energy Govt. of Bihar.
2. The Principal Secretary, Department of Energy Govt. of Bihar., Patna.
3. The Principal Secretary, Department of Energy Govt. of Bihar, Patna.
4. The Bihar State Hydro Electric Power Corporation Ltd. through its Managing Director, Patna.
5. The Managing Director, Bihar State Hydro Electric Power Corporation Ltd. Sone Bhawan 2nd Floor, Birchand Patel Marg, Patna.
6. The Manager (Personnel and Administration), Bihar State Hydro Electric Power Corporation Ltd. Sone Bhawan 2nd Floor, Birchand Patel Marg, Patna.
7. The Bihar Rajya Electronics Development Corporation Ltd. Beltron Bhawan, Shastri Nagar, Patna through its Managing Director.
8. The Managing Director, Bihar Rajya Electronics Development Corporation Ltd. Beltron Bhawan, Shastri Nagar, Patna.
9. The State Schedule Caste and Schedule Tribes Commission through its Managing Director Daroga Rai Path, Patna.
10. The Managing Director, The State Schedule Caste and Schedule Tribes Commission Daroga Rai Path, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Mukesh Kumar No.1, Advocate
For the State	: Mr. Raghawanand, GA 11
For the Respondents No. 04-06	: Mr. Mritunjay Kumar, Advocate
For the Respondents No. 7 & 8	: Mr. Girijesh Kumar, Advocate
For the Respondents No. 09 & 10	: None

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 02-09-2024 The learned Advocate for the petitioner has prayed for

a minor correction in the cause-title of the instant writ petition.

2. The said prayer is considered and allowed.

3. The learned Advocate for the petitioner is permitted

to make the necessary correction of the cause-title of the instant



writ petition here and now.

5. The petitioner has filed the instant writ petitioner, praying for the following reliefs:-

“(I) For issuance of writ in nature of Certiorari for quashing of order as contained in Memo No.-34 dated 21.01.2022 passed by the Respondents No.-5 whereby and where under claim for payment of arrear and Promotion in terms of recommendation of 5th Pay commission is not considerable hence rejected.

(II) Further be Pleased to issue writ in nature of Mandamus directing to Respondents No.-5 to shift the date of Promotion from 13.06.2011 to 13.06.2006 which was granted to the Petitioner in Pay band of Rs/-9300 to 34800 with grade pay of Rs. 4200/- and accordingly make payment of arrear thereof.

(III) For further be pleased to issue writ in nature of Mandamus directing respondents No.-5 to pay his arrear of salary in terms of 5th Pay commission recommendation since 01.02.1999 to 12.06.2001.

(IV) Further be pleased to



issue writ in nature of Mandamus directing to Respondents No.-5 to pay his post retiral dues i.e Leave encashment, & D.A. from 2015 till retirement with penal as well as statutory interest, as Leave encashment & D.A. has been paid only upto July 2015 and onwards unpaid and Difference amount of gratuity which has not been paid because it is not properly calculated so lesser amount in the head of gratuity is paid.

(V) Further for direction to the Respondents No.-3 to pay the benefit of A.C.P. w.e.f. 13.06.2016.

(VI) Further be Pleased to pay the arrear amount in terms fixation of Pay fixed on January 1996 in terms of 5th Pay commission by the original department i.e. Beltron.

(VII) Further be pleased to issue writ in nature of Mandamus directing to the Respondents No.-10 to pay D.A. of January & July 1991, & January 1992 and increment since 17.02.1991 & 17.02.1992.

(VIII) Further be pleased to issue any other appropriate writ/writs, order/orders, Direction/Directions for



which the Petitioner is legally entitled.”

6. It is the case of the petitioner that he was appointed as a typist in the department of Bihar State Electronics Development Corporation Ltd., Government of Bihar, Patna, i.e., Beltron with effect from 17th February 1987. While, he was working in the Corporation, he was transferred on deputation on 01st February 1999. Bihar State Hydroelectric Power Corporation Ltd., Patna (hereinafter referred as ‘BHPCL’). His service was absorbed in BHPCL with effect from 13th June 2001. He was superannuated on 30th November 2018 from BHPCL on attainment of the age of retirement. It is also stated by the petitioner that during his service period, he also worked in Bihar State Scheduled Castes and Scheduled Tribes Commission during the period of 14th February 1991 to 03rd April 1992. The petitioner previously filed a writ petition bearing ***CWJC No. 8982 of 2020***, praying for issuance of writ in the nature of mandamus, directing and commanding the respondents authority to pay the petitioner the arrears of the 5th Pay Commission since, 01st February 1991 to 12th June 2001. He also prayed for similar direction for the payment of arrears of leave encashment, arrears of Dearness Allowance, etc. with effect from July 2015 to 30th November 2018. He also prayed



for revision of pay with effect from 13th June 2006 and grant of ACP from the said date, as he was not promoted after five years of his absorption. The said writ petition was disposed of directing the respondents to extend admissible benefits as claimed by the petitioner within a period of 8 weeks from the date of receipt of copy of the said order. It is also made clear in the said order that if the petitioner is not entitled to any of the demand made by him, in that regard, a necessary speaking order shall be passed and communicated to the petitioner so as to enable him to resort appropriate remedy.

7. In view of the said order passed in CWJC No. 8982 of 2020, the petitioner submitted a detailed representation before the concerned authority. The concerned authority considered the said representation and passed an order dated 21st January 2022 *vide* memo No. 34, rejecting the claim of the petitioner. The petitioner has challenged the said order in the instant writ petition.

8. The learned Advocate appearing on behalf of the petitioner submits that the petitioner was entitled as per the rules and regulations of the Corporation to get promotion after five years of service. The petitioner was absorbed on 12th June 2001 and, therefore, he was entitled to have the promotion on 13th



June 2006, however, he was granted promotion on 13th June 2011. In that view of the matter, the petitioner is entitled to get the promotional scale from 13th June 2006 because of the fact that his promotion was due from the aforesaid date. The second contention of the petitioner is that the petitioner did not get any weightage for his service in the Beltron Department from 17th February 1987 to 01st February 1999. He was also not granted the benefit of his service from 14th February 1991 to 03rd April 1992, when he discharged his duty in Bihar State Scheduled Castes and Scheduled Tribes Commission. Therefore, he is also entitled to get weightage and his pay scale ought to be revised by his previous employer because all along he is in Government employment and it is the general rule in the Government employment that if a person joins another Government employment, the period of work in another Government department is required to be calculated for the purpose of fixation of salary as well as grant of financial benefits and promotion.

9. So far as the promotion is concerned, it is specifically stated in the service rule of BHPCL:-

“All promotions shall be made as per rules inforce from time to time taking into account their seniority and performance of the concerned employee. But an employee’s seniority and grade



will not be the sole criterion to be appointed or promoted to a particular post or grade. Provided the minimum qualifying period required for promotion to a higher post/grade shall be five years from the date of appointment on the lower post-grade.”

10. The plain reading of the said provision suggests that under the service rule of the Corporation, promotion of an employee is not allowed as a matter of course, on completion of 5 years. The employer is at liberty to examine the performance of the concerned employee, it is found that he is not entitled to be promoted in spite of his seniority, his promotion may not be taken into consideration. It is clear under service jurisprudence that promotion is not a matter of right, however, it is a legitimate expectation of an employee that he will be promoted to a higher grade/post on satisfactory performance after a certain period of time. The petitioner was promoted on 13th June 2011. As the promotion is not a vested right of the petitioner, he cannot challenge as to why he was not promoted on 13th June 2006. Similarly, he also cannot demand salary in the promotional post and fixation of his retirement benefit on the basis of the salary in the promotional post with effect from 13th June 2006.

11. Learned Advocate appearing on behalf of BHPCL, takes me to Annexure P/1 dated 13th June 2001, by virtue of which the petitioner's service was absorbed in the Corporation.



Clause 3 clearly states that the Corporation does not have any responsibility regarding the financial claim, viz., gratuity, pension, leave encashment, provident fund, insurance, etc. for which the Corporation is not liable to pay. The petitioner was fully aware of Clause 3 while he accepted the absorption letter, issued in the name of the petitioner on 13th June 2001. Therefore, in the instant writ petition, he cannot claim the arrear salary and retirement benefit from the respondent no. 04 adding his past service in the Beltron and the Bihar State Scheduled Castes and Scheduled Tribes Commission.

12. I have carefully perused the impugned order dated 21st January 2022, in paragraph 4 of the said order. The appropriate authority under respondent no. 04, clearly states that the petitioner was granted leave encashment which he earned while working in the Corporation, arrear of leave encashment, arrear of Dearness Allowances, etc.

13. Learned Advocate for the petitioner further submits that the employees who are junior to the petitioner were granted promotion on completion of five years of service, however, the petitioner was not granted the same. Even, the petitioner was not served with any adverse remark about his unsatisfactory service.



14. This Court, while having the power of judicial review under Article 226 of the Constitution of India, cannot adjudicate as to whether the juniors to the petitioner were favored with the order of promotion prior to the petitioner and what was the reason for it or that if the service record of the petitioner was satisfactory or not. It is for the administrative department to consider the same.

15. For the reasons stated above, I do not find any reason to interfere with the impugned order.

16. However, it is open for the petitioner to raise such point before the appropriate authority and in such case, the appropriate authority shall dispose of the representation of the petitioner after giving him the opportunity of being heard within 90 days from the date of communication of this order.

17. Accordingly, the instant writ petition is disposed of with above observation.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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