

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.504 of 2018**

Kamal Kishore Singh son of Late Ganesh Singh Resident of Village and P.O. Khanpur, Baidyanathpur, P.O. Mirzapur, P.S. Ahiyapur, District - Muzaffarpur presently posted as Anurekhak, Public Health Division, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Public Health and Engineering
4. The Chief Engineer, Public Health and Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health and Engineering Department, Public Health Circle, Muzaffarpur
6. The Executive Engineer, Public Health and Engineering Department, Public Health Division, Muzaffarpur

... .. Respondent/s

**Appearance :**

|                      |   |                                         |
|----------------------|---|-----------------------------------------|
| For the Petitioner/s | : | Mr. Vijay Kumar Singh, Advocate         |
| For the Respondent/s | : | Mr. Anjani Kumar -AAG4                  |
|                      |   | Mr. Shailendra Kumar Singh, AC to AAG-4 |
|                      |   | Mr. Alok Kumar Rahi, AC to AAG-4        |
|                      |   | Mr. Utkarsh Bhushan, Advocate           |

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJIV ROY)**

**Date : 09-01-2024**

Heard the parties.

2. The petitioner wants quashing of the part notification/ memo no. 882 dated 09.06.2014 issued by the respondent no. 2, Principal Secretary, Public Health and Engineering Department (henceforth for short, 'the P.H.E.D.') by which decision has been taken to fill up the post of



‘Prarupak’ (Draftsman) Grade-II through direct recruitment.

3. The petitioner has further prayed that like the Building Construction Department and Water Resources Department of the State, at least 15% of the aforesaid posts be filled up by way of promotion from the eligible persons of ‘the P.H.E.D’.

4. The matrix of facts giving rise to the present case is/are as follows:

5. The petitioner’s father, Ganesh Singh while in service died. Thereafter, he preferred application for his appointment on compassionate ground. The District Compassionate Committee, Muzaffarpur recommended his case for appointment on compassionate ground on Class-III post vide memo no. 4810 dated 18.12.1999. (Annexure P-1 to the writ petition).

6. He was accordingly appointed on the post of ‘Nil Mudrak’ (Blue Printer) vide memo no. 161 dated 11.03.2000 by the office of Superintendent Engineer, P.H.E.D. Circle, Muzaffarpur (Annexure P-2 to the writ petition).

7. The service of the petitioner was confirmed in the year 2005 vide memo no. 262 dated 07.05.2005 by the aforesaid respondent no. 5, the Superintending Engineer.



8. As per the case, the petitioner was subsequently considered for promotion and accordingly, promoted to the post of 'Anurekhak' (Tracer) again issued by the office of the respondent no. 5 vide memo no. 916 dated 16.12.2009 (Annexure P-4 to the writ petition). It was later confirmed/approved by the respondent no. 5 in the year 2016 vide memo no. 342 dated 18.04.2016.

9. The contention of the petitioner is that in line with the said promotion, he would have been considered for the post of 'Prarupak' (Draftsman) Grade-II but for the notification aforesaid issued vide memo no. 882 dated 09.06.2014 by which decision has been taken by 'the P.H.E.D' to fill the said post through direct recruitment. In the process, the promotional avenues of the petitioner has been curtailed.

10. Learned counsel for the petitioner submitted that in the same State of Bihar, the Building Construction Department and Water Resources Department though have issued memos for direct appointment of Draftsman, the same has been restricted to 85% inasmuch as decision has been taken to fill the rest 15% of the posts by way of promotion from the eligible Blue Printer/Tracer and as such the submission is that in line with the other Departments of the



State of Bihar, 15% has to be reserved by 'the P.H.E.D.' by way of promotion and thus, clause 5 (1) of the memo in question has to go.

11. Mr. Anjani Kumar, learned AAG-4 represents the State. A counter has also been filed on behalf of the respondents duly put on affidavit by the Executive Engineer, P.H.E.D., Muzaffarpur.

12. Learned AAG-4 with the help of the counter affidavit submits that :

(i) the petitioner is a compassionate appointee;

(ii) after his confirmation, he has been granted promotion to the post of Tracer in the year 2009 which was approved in the year 2016.

13. He further submits that 'the P.H.E.D.' has all the rights to fill up the entire post of Draftsman by way of direct recruitment unlike the Building Construction Department and Water Resources Department which have earmarked 15% of the same by way of promotion. It is his further submission that it is the sole discretion of the concerned Department on how it appoints a person on certain post, whereafter by way of direct appointment and/or by way of promotion and the petitioner cannot decide/direct the



employer to act in a particular manner.

14. He further submits that vide memo no. 39 dated 20.01.2017, the respondent no. 5 has already informed the Executive Engineer, PHED, Muzaffarpur that in view of the memo dated 09.06.2014, when the entire post of Draftsman are to be filled through direct recruitment, the cases for promotion of Tracer to the said post cannot be considered. (Annexure- R/2 to the counter affidavit).

15. We have gone through the facts of the case as also the submissions put forward by the parties and the memo dated 09.06.2014. The Finance Department, Government of Bihar vide letter no. 4058 dated 28.07.2005 on the basis of the report of the Fitment Committee approved the posts alongwith the pay scale which starts with the Blue Printer-Tracer-Draftsman category II- Draftsman Category I- Architectural Designer.

16. The petitioner came into service on the basis of compassionate appointment as Blue Printer on 11.03.2000 and his services was approved on 07.05.2005. Subsequently, he was promoted as Tracer on 16.12.2009 which was approved on 18.04.2016. In between, in the year 2014, the aforesaid memo no. 882 dated 09.06.2014 came into existence by which



‘the P.H.E.D.’ decided that the posts of Draftsman shall be filled by way of direct recruitment through competitive examination.

17. The said decision of the employer in this case, ‘the P.H.E.D.’ cannot be interfered with only on the ground that some other Departments of the State of Bihar have earmarked 15% of the post through promotion.

18. The exigencies, work load, the strength of employees varies from one Department to other and if some Departments have earmarked 15% of the posts through promotion, the Court cannot force ‘the P.H.E.D.’ to enforce the same in its Department.

19. Save and except the fact that the other Departments have chosen to reserve 15% which prompted the petitioner to invoke the writ jurisdiction of this Court, no other point has been put forward by him.

20. The petitioner also has a case that in Annexure P-12 the Draftsman is shown as a promotional post as against Tracer. This puts forth the very contention and policy of the State; which cannot be digressed from by one department at the whim and caprice of the Officers. We are unable to discern any policy from Annexure P-12; which is a ‘compilation of



Pay Fixation Orders’. In deciding on the pay fixation of different posts in the Government, the post of Draftsman, is treated as a higher post to that of Tracer; for the purpose of giving the Draftsman a higher pay scale. This does not mean that Tracers should be necessarily promoted to the post of Draftsman. The fact that in certain Departments, Draftsman was a promotional post of Tracers; would have weighed in the matter of a higher pay fixed for Draftsman. There can hence be no policy for promotion ferreted out from the Pay Fixation Orders.

21. The writ petition lacks merit and is accordingly dismissed.

**(K. Vinod Chandran, CJ)**

**( Rajiv Roy, J)**

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