

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.543 of 2018

Bindeshwar Das, S/o Late Raghunandan Das, D/o Deepam House, North Khajpura, Munder Sah Colony, Road No.2, P.O.- B.V. College, Patna, Distt-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Water Resource Deptt., Govt. of Bihar, Patna.
3. The Joint Secretary, Water Resource Deptt., Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner : Mr.Rakesh Kumar Samrendra, Advocate
Mr.Harsh Vardhan, Advocate
For the Respondents : Mr.A.Chaturvedi, AC to SC11
Mr.Rewti Kant Raman, AC to SC11

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
C.A.V. JUDGMENT

Date : 04-11-2022

The writ petition has been filed for the following relief/s:-

- (i) To issue a writ in the nature of certiorari for setting aside the order contained in letter no. 332, dated 09.02.2017 (Annexure-2) passed by the respondent no.3 by which the petitioner has been denied his promotion to the post of Superintending Engineer with effect from 27.12.1993 when it became due.
- (ii) For commanding the Respondents to grant promotion to the petitioner on the post of



Superintending Engineer with effect from 27.12.1993 when it became due with all consequential benefits.

(iii) For commanding the Respondents to revise the pension and other retiral dues of the petitioner consequent upon granting the aforesaid promotion and make payment of the arrears accrued thereon with interest.

(iv) For any other relief(s) for which the petitioner may be found entitled to in facts and circumstances of the case.

2. It is the petitioner's case that he was working on the post of 'Executive Engineer' till his superannuation on 31.01.2001, in the Water Resource Department of the Government of Bihar.

3. After recommendation of the Bihar Public Service Commission (BPSC for brevity), the Respondent No.3, Joint Secretary, Water Resource Department, issued a notification dated 08.11.2001 containing list of 18 Executive Engineers, granting them promotion as 'Superintending Engineer (Civil)' in the pay scale of Rs.14300-400-18300/-. This notification contained a clause in para 2, which reads as



follows:-

“2. प्रोन्नत पद के वेतनादि का लाभ अधिसूचना निर्गत होने की तिथि के पश्चात पदभार ग्रहण की तिथि से देय होगा तथा भूतलक्षी प्रभाव से प्रोन्नत पद का लाभ वित्त विभाग की सहमति के उपरांत देय होगा , परन्तु एलिजिबुल पदाधिकारियों के अधीक्षण अभियंता के पदों पर लगातार प्रभार में रहने की तिथि से पहले की किसी तिथि से उच्चतर वेतनमान का लाभ देय नहीं होगा। ”

4. In the list, petitioner's name figures at Serial No.17. He has been granted promotion with effect from the due date i.e. on 27.12.1993, notionally.

5. It is apparent from subsequent order dated 24.02.2003 that after due consultation with the Finance Department and based on its recommendations, financial benefits were granted to 12 persons out of 18 from the notification dated 08.11.2001. These 12 persons were allowed actual benefits of the promotional post of Superintending Engineer with retrospective effect. The same has not been granted to the petitioner.

6. The petitioner is aggrieved by the fact that even after consultation with the Finance Department, he



was not granted the benefit of promotion with effect from the due date, i.e. on 27.12.1993. As per the averments in the writ petitioner, the petitioner made two representations to the Respondent No.3, dated 02.04.2003 and 05.09.2008, raising his demand for consequential benefits with effect from 27.12.1993, in respect of his promotion as 'Superintending Engineer'.

7. As a consequence of representations filed by the petitioner, the Accountant General was informed by Departmental letter dated 09.02.2017 (Annexure-11 to the writ petition) that the claim of the petitioner for the monetary benefit of promotion with retrospective effect was not admissible to the petitioner. It is this communication which is impugned in the instant writ proceedings.

8. Learned counsel for the petitioner submits that the fact of promotion being due on 27.12.1993, not being in dispute, the petitioner cannot be made to suffer for delayed grant of the promotion under notification dated 08.11.2001. The petitioner cannot be made to suffer on account of delay by the Authorities in granting the promotion and the petitioner thus is entitled to consequential/monetary benefits with effect from the due date, i.e. 27.12.1993. He has relied upon decisions reported in *1990 (2) PLJR 248* and unreported



decision of this Court in *C.W.J.C. No.1631 of 1996*.

9. Learned counsel for the State submits that clause 2 of the notification dated 08.11.2001 was clear to the extent that the petitioner was granted notional promotion to the post of 'Superintending Engineer' with effect from 27.12.1993. It was also clear, as per clause 2 of the said notification, that monetary benefit was admissible to the working engineers from the date of taking charge of the post of Superintending Engineer. As regards retrospective monetary benefits, the notification clearly stated that after concurrence from Finance Department such benefit may be admissible. The Finance Department gave concurrence but with respect to such Officers who had remained in current charge of the post of Superintending Engineer since prior to issuance of the notification dated 08.11.2001. Only such Officers were allowed monetary benefit of promotion. This fact is not in dispute. The petitioner, therefore, now cannot claim any right to retrospective monetary benefit of promotion with effect from 27.12.1993, since he had never held current charge of the post of Superintending Engineer till his superannuation on 31.01.2001.

10. Upon consideration of the rival submissions, this Court would find that there is no dispute that



the petitioner has never held current charge of the post of Superintending Engineer till his superannuation on 31.01.2001. He was granted promotion with effect from the due date, i.e. 27.12.1993, notionally. After concurrence of the Finance Department retrospective monetary benefits as a consequence of the notification dated 08.11.2001 was granted only to such persons who had held current charge of the promotional post (Superintending Engineer), with effect from the date on which they had assumed current charge. This aspect of the matter also stood concluded by order dated 24.02.2003 of the Joint Secretary, Water Resource Department. It is thus nobody's case that retrospective monetary benefits have been granted without holding current charge of the promotional post to anyone.

11. This Court would find that the two notifications determining the grant of notional promotions with effect from due date 27.12.1993 was by notifications dated 08.11.2001; and the order dated 24.02.2003. The petitioner has not questioned or challenged these notifications for 15 years, that is till filing of the instant writ petition in the year 2018. The communication dated 09.02.2017, impugned in the instant writ proceedings, is not a new decision with respect to the petitioner's claim. It is a mere reiteration of the issue regarding



petitioner's claim for retrospective monetary benefits of promotion determined by notification dated 08.11.2001 and order dated 24.02.2003. No new cause of action has arisen in the year 2017.

12. The reliance placed by learned counsel for the petitioner on the two judgments, noted above, is of no avail to the petitioner. Decision in the case of *Dr. Paras Nath Prasad vs. The State of Bihar and Others* reported in *1990 (2) PLJR 248* has been given in a totally different set of facts and circumstances. In that case the petitioner had been claiming his due seniority by filing a suit bearing Title Suit No. 21 of 1970, which was decided on contest by a judgment dated 23.02.1983, declaring that the petitioner was entitled to be posted as Senior Medical Officer at a particular seniority position. The State had unsuccessfully challenged the same up to the Supreme Court and it is under such circumstance that the Court has concluded that the petitioner was entitled to promotion, which was denied on account of resistance by the Authorities in implementing the various decisions in judicial proceedings, which were diligently being pursued by the petitioner for years together. In the instant case the petitioner has never assailed the notification dated 08.11.2001 or the order dated 24.02.2003, whereby and



whereunder the issue regarding the petitioner being not entitled to retrospective monetary benefits of promotion as Superintending Engineer with effect from 27.12.1993 was concluded. He, therefore, today, cannot be permitted to raise a stale claim in view of the rights *inter partes* having settled 15 years back.

13. In the unreported decision of *Bindeshwari Singh vs. The State of Bihar and Others*, relied upon by the petitioner's counsel, the petitioner had approached this Court assailing the order granting promotion without actual monetary benefits on the ground that they had not held the superior post or performed its function by filing a writ petition immediately after the impugned Governmental decision, by filing *C.W.J.C. No.1631 of 1996*.

14. In the instant case the Court would find that cause of action had arisen when notional benefits were given to the petitioner for the promotional post of Superintending Engineer, post retirement, but under notification dated 08.11.2001; and order dated 24.02.2003. The issue of petitioner's entitlement to benefits for the promotional post was conclusively determined by the Authorities by the last order dated 24.02.2003. The cause of action thus had arisen for



assailing the determination on 24.02.2003, and the issue has now become dead and stale. The fact that Respondent No.3 has reiterated the same conclusion under letter dated 09.02.2017 issued to the Accountant General, Bihar, under due intimation to the petitioner, even if on petitioner's representation, shall not revive the stale claim.

15. The Court's conclusions are fortified by the decision of the Apex Court in the case of *Union of India and others -versus- C. Girija and others* reported in (2019) 15 SCC 633. Relevant extract of decision of the Apex Court (supra) is being quoted, which reads as follows:-

“ 20. On the proposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 9-1-2001 and for the first time was raked up by her, by filing representation on 25-9-2007 i.e. after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27-12-2007, a stale claim shall not become a live claim. Both the Tribunal and the High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 9-1-2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With



regard to her non-inclusion in panel in 2005 selection, she also filed OA No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27-9-2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.....

.....22. We, thus, due to the above both the reasons, are of the view that the Tribunal and the High Court ought not to have entertained the stale claim of the applicant.”

16. The petitioner has procrastinated for up to 15 years and allowed the position to attain finality *inter partes*. On account of such delay and laches, in view of the judgment of the Apex Court in the case of **C. Girija** (supra), this Court does not find the petitioner entitled to any relief under the equitable jurisdiction of this Court under Article 226 of the Constitution of India.

17. Writ application is dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
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