

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (S) No. 6437 OF 2016**

Umesh Prasad Gupta, son of Late Lakhi Prasad Gupta @  
Lakhi Chandra Bhagat, Resident of – Bariyatu, P.O. and  
P.S. – Bariyatu, District – Ranchi.

... .. **Petitioner**

**V E R S U S**

1. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Ranchi
2. Principal Secretary, Drinking Water & Sanitation Department of the Government of Jharkhand, Nepal House, Ranchi.
3. Spl. Secretary, Drinking Water & Sanitation Department of the Government of Jharkhand, Nepal House, Ranchi.
4. Engineer-in-Chief, Drinking Water & Sanitation Department of the Government of Jharkhand, Nepal House, Ranchi.
5. Dy. Secretary, Vigilance, Engineers' Hostel, Gol Chakkar, Dhurwa, Ranchi.

... .. **Respondents**

**CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK**

For Petitioner : Mr. Ashim Kumar Sahani, Advocate  
For the State: AC to SC (L & C)

**I.A. No. 8080 of 2019**

**12/29. 11. 2019** I.A. No. 8080 of 2019 has been filed by the petitioner for addition of prayer to the main writ petition.

Learned counsel for the petitioner submits that petitioner has remained deprived from getting regular promotion to the post of Superintending Engineer while two of his juniors are already enjoying the benefits. Even the regular DPC was not held which is in violation of the guidelines issued by the Personnel Department. There is no allegation against the petitioner which is evident from the Vigilance Report and instead of convening meeting of DPC, department sat over the matter. Learned counsel submits that in the circumstances it is a fit case wherein petitioner should be given benefits with effect from the date on which juniors to him were promoted i.e. 05.10.2015.

Learned counsel for the respondents opposes the submission and submits that petitioner is not entitled for the consequential benefits.

Having heard submissions advanced by counsel for the parties, I.A. No. 8080 of 2019 is allowed. Let the same form part of the main writ petition.

I.A. No. 8080 of 2019 stands disposed of.

**W.P. (S) No. 6437 OF 2016**

Heard learned counsel for the parties.

2. Petitioner has preferred this writ petition with a prayer for a direction upon the respondents to consider and grant him promotion on higher post of Superintending Engineer with effect from 01.08.2010 with all consequential benefits including seniority and monetary benefits.

Petitioner has further prayed for appropriate directions upon the respondents for grant of benefits of promotion to the post of Superintending Engineer with effect from 05.10.2015 i.e. the date on which juniors to him were promoted and for grant of benefits of further promotion to the post of Chief Engineer with effect from 25.08.2018 i.e. the date of vacancy of the said post or at least from the date the juniors to the petitioner were granted such promotion, with all consequential benefits and to correct the Notiication No. 2956, dated 19.08.2019 accordingly.

3. Brief facts of the case as has been delineated in the writ petition is that on 15.07.1987, petitioner was initially appointed to the post of Assistant Engineer. After bifurcation of the State, petitioner was allocated State of Jharkhand cadre. Thereafter, pursuant to the Notification No. 3425, dated 13.06.2002, petitioner was given promotion to the post of Executive Engineer (Civil) in the pay scale of Rs.10,000 – 15,200 with effect from 01.08.2000 under General Category whereas Md. Tanveer Akhtar and Ajay Kumar Sinha were promoted with effect from 01.04.2001 under General Category and Jhari Oraon was promoted under reserved category with effect from 27.04.2001. Similarly, one R.P. Singh was promoted to the post of Executive Engineer with effect from 23.11.2005. Thus, in the Cadre of Executive Engineer, petitioner is senior to Md. Tanveer Akhtar, Ajay Kumar Sinha, Jhari Oraon as well as R.P. Singh.

It is alleged that the Public Health & Engineer Department, Government of Bihar published a Seniority List of the Officers of the Bihar Engineering Service Cadre – I [i.e. the Executive Engineers (Civil), Superintending Engineers and Chief Engineers) and the same was communicated to the Secretary, Public Health & Engineering Department, Jharkhand, Ranchi wherein name of the petitioner figures at Sl. No. 92 and names of Ajay Kumar Sinha, Md. Tanveer Akhtar and Jhari Oraon have been enlisted at Sl. Nos. 94, 95 and 97 respectively. Thus, it is clearly evident that petitioner is senior to the above named Executive Engineers in the Executive Engineer Cadre by virtue of their respective date of promotion.

It is further alleged that vide Notification dated 18.07.2011, the Drinking water & Sanitation Department of the Government of Jharkhand published Basic Gradation List of Assistant Engineers after Cadre Division of the State of Jharkhand wherein name of the petitioner figures at Sl. No. 42 whereas names of Ram Pravesh Singh and Shri Jhari Oraon were listed at Sl. Nos. 49 and 74 respectively.

Upon reorganization of the State, 12 posts of Superintending Engineers were allotted to the State of Jharkhand and upon reconstitution of the Department, 7 more posts of Superintending Engineers were created. Thus, total sanctioned posts of Superintending Engineers became 19 in numbers which have to be filled up by way of promotion from the posts of Executive Engineers.

4. It is alleged that in the 3<sup>rd</sup> round, 13 posts of Superintending Engineers fell vacant after getting clearance and amongst 13 posts, 9 posts were allotted to General Candidates, 2 posts for Scheduled Tribes and 2 posts for Scheduled Caste. On 23.03.2012, the Departmental Promotion Committee in its meeting decided to fill-up 6 posts of General Category, 2 posts of Scheduled Tribes and 2 posts of Scheduled Caste categories. Amongst them, the case of Tanveer Akhtar and Ajay Kumar Sinha against General Categories and Jhari Oraon against Scheduled Tribes category quota were considered and after due process, they

were promoted to the post of Superintending Engineers. It is case of the petitioner that though on and from 01.08.2010, upon completion of 10 years' of service to the post of Executive Engineer, he became eligible for the next promotion on the higher post of Superintending Engineer but his case for promotion was neither placed nor considered by the Departmental Promotion Committee.

It is further alleged that pursuant to the notification no. 4733, dated 03.11.2015, the Drinking Water & Sanitation Department, Jharkhand granted regular promotion to one Ram Pravesh Singh to the post of Superintending Engineer, who is also admittedly junior to the petitioner in Executive Engineer Category ignoring case of the petitioner. Petitioner also submitted his representation before the respondent authorities for consideration of his case for promotion but the same has not been considered and he has been constraint to knock door of this Court.

5. Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioner submits that it is a case of total discrimination and disparity. There was sanctioned and vacant post of Superintending Engineer and petitioner was fully eligible to be promoted but the same has been denied to him. Learned counsel submits that pursuant to the Notification No. 3050/2598 dated 25.06.2011/ 04.08.2011 [Annexures- 6 and 6/1 respectively], issued by the Department, petitioner was made Superintending Engineer [In-charge] and since then he has been discharging his duties as such without any complaint from any quarter. Learned counsel submits that petitioner is at present discharging his duties as a Technical Secretary to the Chief Engineer, Chief Design Organisation of the Drinking Water & Sanitation Department, Jharkhand, Ranchi. The Department has ignored his eligibility and seniority in the Cadre of Executive Engineer and illegally granted promotion to his juniors. Learned counsel submits that even the Jharkhand Public Service Commission, in its recommendation letter dated 05.03.2012, addressed to the Drinking Water & Sanitation Department, has found the

petitioner fit for promotion. Learned counsel further submits that respondents have also acted in breach of norms and procedures as contained in Circular issued vide Memo No. 6227, dated 20.11.2008; letter no. 104, dated 09.01.1992; Guidelines issued by the Chief Secretary vide letter no. 3804, dated 08.07.2011; letter no. 1607, dated 20.02.2013; Letter/Circular No. 1082, dated 22.02.1988 of the Personnel, Administrative Reforms and Rajbhasha Department, Government of Bihar; Resolution issued vide Memo No. 6227, dated 20.11.2008 of the Personnel, Administrative Reforms and Rajbhasha Department, Jharkhand; Policy decision issued vide letter no. 3804, dated 08.07.2011 by the Personnel, Administrative Reforms and Rajbhasha Department; and the letter dated 20.02.2013. Learned counsel further submits that non-availability of clearance certificate from Vigilance and Lokayukt and pendency of criminal case in ST/ST Police Station cannot be a bar in consideration of case of the petitioner for promotion in view of the settled principle of law that even during currency of departmental proceeding or criminal case, consideration for promotion cannot be withheld. More so, on the alleged date on which promotion of petitioner to the next post of Superintending Engineer fell due and when juniors to him were promoted, there was no criminal case pending against him. Learned counsel submits that even the case under SC & ST (Prevention of Atrocities) Act, 1989 was filed in connivance with blacklisted contractors and the same was quashed vide order dated 11.02.2016 in Cr.M.P. No. 2335 of 2012 and affirmed by Hon'ble Apex Court in SLP (Cr.) No. 4870 of 2016. Even the Clearance Certificate was issued in favour of the petitioner by the Lokayukt vide letter no. 2109, dated 01.07.2015.

Mr. A.K. Sahani, learned counsel further submits that one S.K. Modi, the present Chief Engineer, Dumka and who is junior to the petitioner in Assistant Engineer Cadre, has been promoted to the post of Chief Engineer in excess of the reserved quota (60% of 5 sanctioned posts) and adjusted as a Chief Engineer Vigilance by the Department. Case of the petitioner for grant of promotion has been kept pending without any reason and the same needs

interference by this Court. Even reserving the post instead of grant of promotion is in violation of law as has been held in the case of **Janki Raman**. Learned counsel submits that since no proceeding, much less any Vigilance proceeding remained pending against the petitioner and as such the post of Superintending Engineer reserved for the petitioner by the DPC in its meeting should have been allocated to him by granting promotion from the date on which other similarly situated persons were granted such promotion with all consequential benefits. Petitioner has been unnecessarily harassed and deprived for consideration for his promotion on the higher post of Chief Engineer. Even in its proceeding dated 24.04.2018, the DPC has observed that petitioner is senior to other persons and post of Chief Engineer has been kept reserved due to pendency of writ petition and lack of Vigilance report. Learned counsel emphatically submits that petitioner is entitled for promotion to the post of Superintending Engineer from the date on which other similarly situated persons were promoted and further he is entitled for promotion to the vacant post of Chief Engineer with all consequential benefits.

Drawing attention of this Court towards affidavit filed on 27.06.2019, it is argued that vide letter no. 677, dated 09.05.2019 (Annexure-15), the Cabinet Secretariat and Vigilance Department of Government of Jharkhand has communicated to the Joint Secretary, Drinking Water & Cleanliness Department, regarding clearance Certificate to the effect that no enquiry or prosecution is pending against the petitioner.

It is further argued by learned counsel that in view of order passed in the case of **D.N. Prasad** of the same Department, petitioner is entitled for the benefits of retrospective promotion following the Circular dated 13.08.2008 which provides that for any reason, if senior is not granted promotion while granting promotion to juniors, then the senior shall be granted promotion from the date on which juniors were promoted. Learned counsel has further relied upon the decision rendered by the Hon'ble Supreme Court in the case reported in **1998(5) SCC 87** which

has also been followed by this Court in the Judgment dated 05.03.2012 passed in the case of **Rajeshwar Prasad Vs. State of Jharkhand and others** passed in **W.P.(S) No. 1932 of 2005** and said petitioner Rajeshwar Prasad has been granted consequential benefits, which has been brought on record vide Annexure-19 to I.A. No. 8080 of 2019.

Lastly Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioner has brought notice to this Court the orders passed in the case of **Narendra Kumar Yadav Vs. State of Jharkhand and others** in **W.P.(S) No. 6781 of 2017** and submits that this is a fit case where petitioner may be given benefits retrospectively.

6. On the other hand, learned counsel appearing on behalf of the respondents vehemently oppose contentions advanced by learned counsel appearing on behalf of the petitioner and submits that there exists no separate cadre of Executive Engineers in the Department. The provisional gradation list of Bihar Engineering Class-I issued by Public Health Engineering Department, Bihar, vide letter no. 7865, dated 19.11.2002, is not binding in the State of Jharkhand as the same had been published after bifurcation of the State. Learned counsel further submits that for promotion, only basic grade seniority i.e. seniority of Assistant Engineers can be considered for promotion to the post of Executive Engineer/ Superintending Engineer/ Chief Engineer/ Engineer-in-Chief. Drawing attention of this Court towards Chart mentioned at paragraph-10 of the counter affidavit filed on 23.03.2017, it is argued that Ajay Kumar Sinha and Tanvir Akhtar are senior to the petitioner whereas Jhari Oraon, though junior to the petitioner but falls in Scheduled Tribes category and thus there is no injustice with the petitioner. Learned counsel further submits that Ram Parwesh Singh is though junior to the petitioner as per gradation list of 2011 but in view of proceeding of DPC held on 05.10.2015, even after considering case of the petitioner for promotion to the post of Superintending Engineer, the same was kept reserved for him for the reasons mentioned in the proceeding. Learned counsel further submits that so far prayer of

the petitioner for grant of promotion retrospectively is concerned, it cannot be accepted in view of Rule 58 of the Bihar Service Code and 74 of Bihar Finance Code. Learned counsel has relied upon para-7 of the Judgment passed by Hon'ble Apex Court in the case of ***Nirmal Chandra Sinha Vs. Union of India*** wherein it has been observed that ***"promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of post"***. Learned counsel however submits that Department shall process and consider for promotion to all eligible candidates as per law.

7. I have heard counsel for the parties and gone through averments made in the affidavits filed by the rival parties. From perusal of records and considering facts and circumstances of the case, I find that the respondents have tried to distinguish case of the petitioner from the similarly situated other persons and have declined to grant benefits.
8. In the case of ***Arindam Chattopadhyay and others Vs. State of West Bengal and others*** reported in ***(2013) 4 SCC 152***, the Hon'ble Supreme Court while allowing the appeal and setting aside the impugned order directed the respondents to pay salary and allowances to the appellants in the pay scale of the post of CDPO with effect from the date they took charge of those posts. It is relevant to quote para-13 of the said Judgment:

*"13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather,*



*they have tacitly admitted that the appellants are working as full-fledged CDPOs since July, 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalized for the Government's failure to undertake the exercise of making regular promotions."*

In the case of **A.K. Pradhan Vs. The State of Bihar and others** reported in **1998(1) PLJR SC** the Hon'ble Supreme Court had disposed of the appeal with an observation that the appellant if not already regularized as Headmaster, shall be considered for regularization w.e.f. the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government.

9. In view of facts and circumstances narrated hereinabove, I do not find any substance in the arguments advanced by counsel for the respondents. The grounds taken by the respondents does not find force in the facts and circumstances of the case. The promotion of the petitioner was kept pending for years together without any fault on his part and juniors to him have been given promotion with effect from 05.10.2015. Petitioner is eligible for getting promotion, pay and other benefits of the higher post from the date juniors to him have been promoted to the post of Superintending Engineer and Chief Engineer respectively.
10. Now the sole question to be answered "**Whether petitioner is entitled to get the financial benefits of promotional post from retrospective effect?**" In a number of decisions, this Court has observed that an employee being given promotion with retrospective effect, cannot be denied the material benefits accruing from the promotion and the position is now well established. In this context the finding of the Hon'ble Apex Court in the case of **A.K. Pradhan Vs. The State of Bihar and others** (Supra); **Dr. Paras Nath Prasad Vs. State of Bihar and others** reported in **1990(2) PLJR 248**; **Md. Hafiz Vs. State of Bihar and others** reported in **2003(2) PLJR 44** and the judgment

reported in **1999(1) PLJR 272** are relevant. In those Judgments, it has categorically been held that an employee being given promotion with retrospective effect, cannot be denied the material benefits accruing from the promotion and this position is now well established.

11. The respondents – State, in the capacity of a model employer, cannot be permitted to raise an arguments that even if petitioner is granted promotion with retrospective effect, he is not eligible for financial and consequential benefits. The Judgments referred to above clearly speaks in volume that in such cases the concerned employee is entitled for all consequential benefits. Accordingly, it is held that petitioner is also entitled for the benefits retrospectively.
12. In the result this writ petition stands allowed. The matter is remitted to consider the case of the petitioner in accordance with law considering the aforesaid observations. Let a decision be taken within a period of six weeks from today. Needless to say if petitioner is found entitled, the entire consequential benefits shall flow from the date of his promotion.

**(Dr. S.N. Pathak, J.)**