

**(2012) 07 JH CK 0228**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 4170 of 2003**

Rathu Ram Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 02-07-2012

**Acts Referred:**

Bihar Reorganisation Act, 2000 — Section 2(g), 85  
Constitution of India, 1950 — Article 226

**Citation :** (2012) 4 JLJR 453

**Hon'ble Judges :** Alok Singh, J

**Bench :** Single Bench

**Advocate :** Pradip Gangopadhyay, for the Appellant; Tejo Mistri, for the Respondent No. 5 and Mr. Rajesh Kumar, for the State, for the Respondent

**Final Decision :** Allowed

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## Judgement

Alok Singh, J.—Undisputedly, petitioner was appointed as "Anurekhak" in the Public Works Department in the undivided State of Bihar on 6.9.1980; petitioner was promoted to the post of Draftsman Grade-II w.e.f. 25.8.1995; petitioner took admission in the Evening Course of four years Integrated Diploma Course of Civil Engineering with the permission of the authorities in the year 1988; petitioner completed Diploma in Civil Engineering in the year 1995 from the Government Polytechnic, Ranchi; the then Government of Bihar has issued Circular dated 31st May, 1976, thereby, making provision to promote those Draftsman or Lab Assistants, who are in Government service for the last six years and who have acquired requisite qualifications for the post of Junior Engineer, as Junior Engineers, Petitioner, having obtained Diploma, which is requisite qualification for the post of Junior Engineer, applied for the promotional post of Junior Engineer as per the Government Circular dated 31st May, 1976. Petitioner's case for the promotion to the post of Junior Engineer was forwarded by the Chief Engineer vide letter dated 2.5.2002, Annexure-4 to the writ petition. However, despite repeated request and recommendation made by Bihar Public Service Commission, petitioner was not granted promotion as per Circular dated

31st May, 1976. Therefore, petitioner was compelled to move this Court under Article 226 of the Constitution of India. I have heard learned counsel for the parties and I have carefully perused the records.

2. Mr. Rajesh Kumar, learned counsel appearing for the State has vehemently argued that after issuance of Government Notification (Annexure-A to the counter affidavit), earlier Notification of 1976 shall be deemed to have been superseded. He has further argued that any recommendation made by the Bihar Public Service Commission before the bifurcation of the State has got no binding effect on the State of Jharkhand. However, on being asked about the factual aspects as narrated in the beginning of the judgment, he has fairly stated that there is no dispute about the factual aspects, such as, date of appointment of petitioner, date of promotion and the date of obtaining of Diploma in Civil Engineering.

3. Having heard the learned counsel for the parties and having perused the record, in the firm opinion of this Court, Circular dated 31st May, 1976 has not been superseded by any subsequent notification. Notification of 1987 (Annexure-A to the counter affidavit) speaks about the direct recruitment and provides a procedure as to how the direct recruitment on the post of Junior Engineer shall be made. However, It does not speak about the promotion to the post of Junior Engineer from the Draftsman and Lab Assistants as provided under the previous Circular of 1976. Moreover, Circular of 1987 does not suggest that there would be no promotion to the post of Junior Engineer from the Draftsman or Lab Assistant.

4. As per Section 2(g) of Bihar Reorganisation Act, definition of law includes enactment, ordinance, regulation, order by law, rule, scheme, notification or instrument having force of law. Therefore, notification dated 31.5.1976 having force of law shall be law. Accordingly, in view of Section 85 of the Act shall be applicable in the State of Jharkhand unless repealed or superseded.

5. Circular of 1976 nowhere suggest that incumbent, for the promotional post of Junior Engineer, should have six years of experience as a Draftsman, rather careful reading of Annexure-1 to the writ petition i.e. Circular of 1976 would reveal that the only requirement is that incumbent should have completed six years of Government services and have acquired requisite qualification to be considered for the promotion on the post of Junior Engineer.

6. In view of the discussions made above, petitioner is entitled for the promotion to the post of Junior Engineer as per the Circular dated 31st May, 1976. Accordingly, this writ petition is allowed and Respondents are directed to promote the petitioner to the post of Junior Engineer w.e.f. May 2002, the date his case was forwarded by the Chief Engineer vide Annexure-4 to the writ petition and shall release all the monetary benefits to him within 90 days from today. No order as to cost.