

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 549 of 2012

IN

Civil Writ Jurisdiction Case No 6588 of 2010

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1. The State Of Bihar
 2. The Principal Secretary, Department Of Industries, Government of Bihar, Patna
 3. The Director Industries, Government of Bihar, Patna
 4. The Director, Upendra Maharathi Institute of Industrial Design, Department Of Industries, Patna- 800013

.... Appellant/s

Versus

Ishwar Nath Jha Son Of Late Pandit, Sri Rajendra Jha Resident Of Village -
Bangaon, P.O.- Bajapatti, P.S.- Bajapatti, District - Sitamarhi

.... Respondent/s

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For the Appellant/s : Mr Roy Shivajinath, AAG III with
Mr Sunil Kumar Raj, JC to AAG III

For the Respondent/s : M/s Suraj Narain Yadav, Upendra Chaubey, Pooja
Shree & Annu Shree, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-07-2015

The present intra-Court Appeal has been filed by the State being aggrieved by judgment and order dated 16.09.2011 passed in CWJC No 6588 of 2010 whereby the learned Single Judge allowed the writ petition and held that the State was constitutionally bound to provide for promotional avenues to the Laboratory Assistant working in an Establishment under the Department of Industries.

2 It may be noted for the sake of record that after

hearing the parties, this appeal was dismissed in limine by order dated 14.07.2014 by Division Bench presided over by Hon'ble the Chief Justice. State carried the matter to the Apex Court. The Apex Court set aside the order and remanded the matter for a reasoned order at the appellate stage. It is under these circumstances, the matter is being taken up and with consent of parties, is being disposed of at this stage itself as contesting respondent, who was the writ petitioner, has already entered appearance.

3 The petitioner joined as Laboratory Assistant on 01.01.1980 in the Institute of Industrial Design, Patna which is an Establishment under the Department of Industries, Government of Bihar. It is now known as Upendra Maharathi Institute of Industrial Design. Having failed to get any promotion for over 29 years of satisfactory service, he had filed the writ petition in the High Court. The writ petition was allowed by the learned Single Judge holding that there was constitutional obligation on the State to provide for promotional avenues to its employee. Doing otherwise would be detrimental and counter productive. Reliance was placed on the judgment of *Dr (Ms) O Z Hussain –Versus- Union of India, 1990 (Supp) Supreme Court Cases 688*. The learned Single Judge also noted that under the Rules applicable to the Department of Industries, there were other promotional posts whose basic qualification and

eligibility matched the qualification of the post which the writ petitioner was holding. His post could, therefore, be additionally notified for the purposes of promotional avenue. State, being aggrieved, has come in this intra-Court Appeal.

4 Having heard the parties, we are satisfied that the learned Single Judge did not err in any manner. We may note in fairness to the learned Additional Advocate General who has placed reliance on the judgment of *State of Tripura & Others –Versus- K K Roy, (2004) 9 Supreme Court Cases 65* to submit that the writ petitioner having been given Assured Career Progression on completion of 12 years and 24 years of service without promotion, State was under no other obligation much less provide for promotional avenues.

5 We must first note that in the judgment of *K K Roy (supra)*, the first thing the Apex Court noted, after relying on the judgment of the Apex Court in the case of *Council of Scientific and Industrial Research & Another –Versus- K G S Bhatt & Another, (1989) 4 Supreme Court Cases 635*, that it is the **constitutional obligation of State in view of Articles 14 and 16 of the Constitution to provide for promotional avenue for its employees.** The plea of the State, that it was a single post cadre which the employee was aware when he joined and, as such, he was stopped

from seeking promotional avenue, was also specifically negated in view of the constitutional obligation aforesaid. Thus, from these judgments of the Apex Court, the only thing this Court can derive is there has to be a promotional avenue provided for the employees of the State, not providing would be detrimental and unconstitutional. What would people say that you joined State Government service at the age of 25 years as an Accountant and you are retiring at the age of 60 years as an Accountant? Will it not reflect on the psyche of a person when he is in service?

6 Now is the question as to what is understood by promotion. As noted above, the learned Additional Advocate General has submitted that the petitioner was granted ACP. That would be sufficient. He, in this connection, placed reliance on Rule 5 of the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 which provides that notwithstanding grant of next higher pay scale to an employee under the Scheme, it should not be treated as a promotion and no additional promotional post shall be created. He submits that it is the Scheme that prohibits creation of promotional post while granting higher pay of the notional promotional post. Our answer to this is what the Apex Court said in the case of *Lalit Mohan Deb & Others –Versus- Union of India & Others*, AIR 1972 Supreme Court 995 while dealing with

the case of selection grade vis-à-vis promotion:

“It is well recognized that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post.”

7 Therefore, granting a higher pay scale by ACP does not comply the constitutional requirement to provide for promotion. There has to be a change in status as well. That is the least an employee can expect from a Government which is under constitutional obligation to provide for promotional avenues.

8 In fairness to the learned Additional Advocate General, he has placed reliance on another Division Bench judgment of this Court in the case of *Neelam Singh & Another –Versus- State of Bihar & Others* being CWJC No 4825 of 2009 which was dismissed by judgment and order dated 05th May, 2011. He has relied upon the said judgment for the proposition that:

“No Government servant has a fundamental or an inherent right to promotion. Unless the right of promotion is conferred by the statutory provisions, the Government servant cannot claim the right of being considered for promotion.”

9 We must first look to the Rules which were under consideration. Rule 5, as quoted in the judgment itself, clearly shows that this Rule pertains to a dying cadre. A clear declaration to that effect was made. The person was in a dying cadre. That makes all the difference. Further, the proposition cannot be applied to the facts of

the present case in view of three judgments of the Apex Court, as noted above which was not brought to the notice of this Court and have not been considered by this Court.

10 Thus, for the reasons aforesaid, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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