

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1190 of 1999

Nagendra Rai, Son of late Ram Lakhan Rai, at present posted as Assistant Soil Chemist at Sitamarhi, resident of Village-Malikour, P.S.-Pusa, District-Samastipur.

.... **Petitioner/s**

Versus

1. The State of Bihar through the Agriculture Production Commissioner and Secretary Agriculture Department, having his office in Vikas Bhawan, New Secretariat, P.S.-Sachivalaya, District-Patna.
2. The Additional Secretary, Government of Bihar in the Department of Agriculture Incharge Establishment, having his office in Vikas Bhawan, New Secretariat, P.S.-Sachivalaya, District-Patna.
3. The Director of Agriculture, Bihar, Patna, having his office in Vikas Bhawan, New Secretariat, P.S.-Sachivalaya, District-Patna.
4. The Director Administration, Agriculture Department, having his office in Vikas Bhawan, New Secretariat, P.S.-Sachivalaya, District-Patna.
5. The Finance Commissioner and Secretary, Government of Bihar, having his office in Vikas Bhawan, Old Secretariat Building, P.S.-Sachivalaya, District-Patna.
6. The Joint Secretary, Agriculture Department, having his office in Vikas Bhawan, New Secretariat, P.S.-Sachivalaya, District-Patna.
7. Sri B.K. Sahay, father's name not known to the petitioner, Incharge Joint Director of Agriculture, Adaptive Research, having his office in Mithapur, P.S.-Jakkanpur, District-Patna.

.... **Respondent/s**

Appearance :

For the Petitioner/s : Mr. Man Mohan, Advocate
Mr. Vikas Mohan, Advocate

For the Respondent/s (State) : Mr. J.P. Karn, Sr. Advocate (AAG-4)
Mr. Ranjan Kumar, Advocate (AC to AAG-4)

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

Date: 03-07-2015

This writ application has been filed by the petitioner, seeking direction to the respondents to consider his case for grant of regular promotion to the post of Assistant Director, Agriculture (Chemistry), Category-III, in Junior Selection Grade in the scale of Rs. 3,000-4,500/- with effect from 01.03.1989, which, according to him, was the due date for consideration of his case for promotion. He has further claimed for consideration of his regular promotion on the post of Deputy Director, Agriculture (Chemistry), Category-III, in Senior Selection Grade with effect from 01.03.1994, in the scale of Rs. 3,700-5,000/- and promotion to the post of Joint Director, Agriculture (Adaptive Research), in Super Time Scale with effect from 01.07.1998, in the scale of Rs. 4,100-5,300/-

2. The petitioner retired on attaining the age of superannuation, with effect from 31.01.2000. He has filed the present writ application, seeking direction for grant of regular promotion to the post of Assistant Director,



Agriculture which is, admittedly, a Junior Selection Grade post in the cadre of Bihar Agriculture Service (Chemistry), (Category-III), with effect from 01.03.1989. The petitioner has been granted promotion to Junior Selection Grade in the scale of Rs. 3,000-4,500/- with all financial benefits with effect from 01.12.1993, vide a Notification issued by the Agriculture Department, Government of Bihar dated 28.06.2002, during the pendency of the present writ application. It is the petitioner's case, however, that he should have been granted promotion to Junior Selection Grade with effect from 01.03.1989, instead of 01.12.1993.

3. At the outset, it must be pointed out that it is not the case of the petitioner that any person, junior to him in the cadre to which he belongs, has been granted any promotion overlooking his case. From the Notification issued by the Agriculture Department dated 28.06.2002, it appears that at least one person, above in the seniority list, has been granted promotion to Junior Selection Grade with effect from 01.12.1993.

4. It is the petitioner's case that on 18.03.1964, he was appointed against the post of Junior Research Assistant, in



Agriculture Research Institute at Dholi in the district of Muzaffarpur and was subsequently, promoted to the post of Senior Research Assistant with effect from 04.07.1969. Subsequently, he was allowed to work on ad-hoc basis on the next higher post, in Bihar Agriculture Service, Class-II, with effect from 13.10.1982 and thereafter, by a Government Notification dated 26.11.1986, he was granted substantive promotion to the post of Bihar Agriculture Service, Class-II (Chemistry), (Category-III) with effect from 13.10.1982. It has been stated in the writ application that petitioner became eligible for consideration for promotion to higher post with effect from 01.03.1989, on the basis of his position in the existing seniority list of Category-III (Chemistry) of Bihar Agriculture Service, Class-II. Apart from this reasoning that he became eligible for consideration for promotion to higher post in Junior Selection Grade with effect from 01.03.1989, there is no statement made or ground taken in the writ application to demonstrate that he had a legal/statutory right for promotion, with effect from 01.03.1989, to Junior Selection Grade post. He has brought on record a copy of the letter dated



11.11.1992 (Annexure – 4), in order to make out a case that regular vacant sanctioned post was available in Junior Selection Grade in the cadre. The letter shows that there were 12 posts earmarked for Junior Selection Grade, 8 for Senior Selection Grade and 2 for Super Time Scale, out of total sanctioned strength of the Bihar Agriculture Service, Category-III (Chemistry). It has been stated in Paragraph-11 of the writ application that petitioner's position in the seniority list of Bihar Agriculture Service (Category-III), as on 01.03.1989, was at Serial No.-22 and it has been contended that his case ought to have been considered for promotion on the basis of his seniority, as on 01.03.1989. It is his further case that, as on 01.02.1993, he was at Serial No.-8 in the seniority list of Category-III, Bihar Agriculture Service and on that basis his case ought to have been considered for promotion to Senior Selection Grade in the scale of Rs. 3,700-5,000/-. His further case is that, as on 01.02.1998, petitioner's seniority position was at Serial No.-2, therefore, he should have been granted promotion to Super Time Scale, with effect from that date.

5. In nutshell, it is the petitioner's case that his case



for promotion ought to have been considered on the basis of gradation list of Bihar Agriculture Service (Chemistry), (Category-III) against various promotional posts, as and when the vacancies arose. It is the contention of learned counsel for the petitioner that denial of consideration of petitioner's case for promotion on the date when the vacancies arose and grant of promotion with effect from such dates, in the facts and circumstances of the case, is arbitrary and violative of Articles 14 & 16 of the Constitution of India.

6. Learned counsel for the petitioner has relied upon a decision of this Court, as contained in the order dated 28.11.1996, passed in C.W.J.C. No. 9095 of 1996 (Krishnadeo Prasad Vs. The State of Bihar & Ors.), in order to contend that in similar circumstance, the Court had directed the respondents to consider the case of the petitioner of that case for promotion on the post of Assistant Director, Agriculture, (Category-III) in Junior Selection Grade, as also for further promotion to the post of Deputy Director, Agriculture in Senior Selection Grade as well as in Super Time Scale. The petitioner, Krishnadeo Prasad, of

said C.W.J.C. No. 9095 of 1996 was also the Member of Bihar Agriculture Service.

7. Through I.A. No. 3048 of 2003, the petitioner has sought for amendment in the present writ application, seeking shifting of the date of promotion in Junior Selection Grade, granted to him, vide above noted Notification dated 28.06.2002, from 01.12.1993 to 01.03.1989. I.A. No. 3048 of 2003 is allowed. The relief, as sought for through I.A. No. 3048 of 2003, has been treated to be relief sought for in the present writ application and the contents of the said interlocutory application have been treated to be part of the writ application.

8. Counter affidavit and supplementary counter affidavit have been filed on behalf of the respondents stating, therein, that the petitioner's case was considered alongwith other similarly situated persons for promotion to Junior Selection Grade and by the said Notification dated 28.06.2002, one Badri Narain Choubey, an Officer senior to the petitioner, has been given promotion to Junior Selection Grade with effect from 01.12.1993. It has further been stated that some Officers senior in the gradation list of the



same category, were granted promotion to Junior Selection Grade with effect from 01.12.1993 earlier, vide Notification issued on 30.04.1998, and the last person, who was granted such promotion through said Notification dated 30.04.1998, was placed at Serial No.-70 of the seniority list, whereas, the petitioner was at Serial No.-75. As regards, petitioner's claim for promotion to Senior Selection Grade, it has been stated that Selection Grade has been abolished, with effect from 01.01.1996 and no person could be granted any such promotion to Selection Grade after 31.12.1995, in view of State Government decision, as contained in Resolution dated 08.02.1999 by which, Central Scale of Pay was introduced for the employees of the State Government. It has further been stated that in the light of policy decision of the State Government, as contained in Resolution dated 08.02.1999, promotions could be granted only against identified need based posts in the respective replacement scales. It has been stated that the post of Junior Selection Grade has been identified, as Assistant Director of Agriculture and scale of Rs. 6,500-10,500/- has been specified for the post of Assistant Director, Agriculture. It has further been stated



that the petitioner's claim for grant of Senior Selection Grade is not tenable, as he was granted promotion to Junior Selection Grade, with effect from 01.12.1993 and there is fixed "Kalawadhi" of five years for grant of promotion to Senior Selection Grade/Super Time Scale. It has, accordingly, been contended that before the petitioner could complete the said "Kalawadhi" of five years, the provision for promotion to Senior Selection Grade/Super Time Scale, came to be abolished with effect from 01.01.1996, in view of the Resolution dated 08.02.1999. The respondents have also brought on record the proceedings of the Departmental Promotion Committee, dated 24.09.2001, by way of Annexure – E to the supplementary counter affidavit from which, it appears that the cases of such Officers were taken into consideration for giving them benefit of promotion to Junior Selection Grade, with effect from dates prior to 31.12.1995. Annexure – D to the supplementary counter affidavit is a Notification, issued by the State Government of Bihar, wherein, "Kalawadhi" has been prescribed for grant of Junior Selection Grade, Senior Selection Grade and Super Time Scale promotions.



9. Learned counsel, appearing on behalf of the respondents-State of Bihar, has submitted that the petitioner does not have any legal right to claim promotion to Junior Selection Grade with effect from 01.03.1989, and has further submitted that even the persons senior to the petitioner, who were granted promotion to Junior Selection Grade by an earlier decision, have been granted such promotion, with effect from 01.12.1993 and thereafter, the petitioner cannot claim such promotion with effect from a date prior to 01.03.1989.

10. From the pleadings made on behalf of the parties and the submissions made on their behalf, as noted above, it is evident that the petitioner's claim for grant of promotion to Senior Selection Grade and Super Time Scale can be entertained only if this Court comes to a finding that the petitioner was entitled for promotion to Junior Selection Grade with effect from 01.03.1989, which has been granted to him, with effect from 01.12.1993. Indisputably, the provision for grant of Senior Selection Grade and Super Time Scale, came to be abolished with effect from 01.01.1996, upon introduction of Central Scale of Pay by the

above noted Resolution dated 08.02.1999.

11. The petitioner's claim that he should have been granted promotion to Junior Selection Grade with effect from 01.03.1989, when, according to him, the vacancy arose and he was entitled for such promotion on the basis of his seniority in the cadre, in my opinion, cannot be entertained for following three reasons:-

(i) No Statutory Rule has been brought to my notice, governing service condition of the Members of Bihar Agriculture Service (Chemistry), Category-III, which mandates grant of promotion with effect from the date, the vacancy arise.

Learned counsel for the petitioner has not been able to satisfy this Court, with reference to any statutory requirement for grant of promotion with effect from a retrospective date, even if the pleading that the petitioner was eligible for consideration for such promotion on 01.03.1989, as per seniority is accepted.

In my opinion, the petitioner has no legal



right to claim his promotion to Junior Selection Grade, with effect from 01.03.1989 when, according to him, the vacancy arose. This view finds support from Supreme Court decision in case of “*Union of India and Ors. Vs. K.K. Vadera and Ors.*” reported in “*1989 Supp. (2) SCC 625*”, **Paragraph - 5** of which, reads as follows:-

“5. There is no statutory provision that the promotion to the post of Scientist ‘B’ should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist ‘B’ should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when



additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

The view taken by Supreme Court in case of Union of India and Ors. Vs. K.K. Vadera and Ors. (*Supra*), has subsequently been referred to and relied upon in another decision of Supreme Court in case of “*Nirmal Chandra Sinha v. Union of India & Ors.*” reported in “(2008) 14 SCC 29”, *Paragraph – 7* of which, reads as thus:-

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera, State of Uttaranchal v.

*Dinesh Kumar Sharma, K.V. Subba
Rao v. Govt. of A.P., Sanjay K. Sinha-
II v. State of Bihar, etc.”*

(ii) Even the persons, who were admittedly senior to the petitioner in the cadre have been granted promotion to Junior Selection Grade with effect from 01.12.1993, by virtue of a Notification issued much earlier on 30.04.1998. This fact has not been denied. In such circumstance, I do not find any reason to issue direction to the respondents to consider the petitioner's case for promotion to Junior Selection Grade with effect from a date which is prior to date with effect from which, the persons senior to the petitioner in the same cadre, have been granted promotion to the Junior Selection Grade.

(iii) If the petitioner was so sanguine about his claim for consideration for promotion or promotion to Junior Selection Grade with effect from 01.03.1989, he could have approached this Court earlier. Relief claim at such belated stage in the present proceeding filed in the year 1999

can be rejected on this ground also, in addition to the grounds noted above. Reference can be made in this regard to a Supreme Court decision in case of ***“Bhakra Beas Management Board Versus Krishan Kumar Vij and Anr.”*** reported in ***“(2010) 8 SCC 701”*** in which, the Supreme Court has held in ***Paragraph – 37*** as follows:-

“37. Yet, another question that draws our attention is with regard to delay and laches. In fact, Respondent I’s petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.”

It is, however, made clear, and as has been

noted above, that I find no merit in petitioner's claim.

12. In view of the discussions as above, I am of the opinion that the petitioner's claim that he had right to be considered and granted promotion with retrospective effect, effective from the date when the vacancies arose to promotional posts, has no merit. In no circumstance, the petitioner, in the present facts and circumstances, when the persons senior to him have been given promotion to Junior Selection Grade with effect from 01.12.1993, direction can be issued for considering the petitioner's case for promotion with effect from 01.03.1989, in the absence of any pleading that there has been violation of any statutory provision in grant of such promotion. It is not the case of the petitioner that any person, junior to him, has been granted promotion to Junior Selection Grade, with effect from any date prior to 01.12.1993.

13. Once this Court comes to a conclusion that the date of promotion granted to the petitioner to Junior Selection Grade with effect from 01.12.1993, cannot be shifted back to any date, his claim for grant of Senior



Selection Grade or Super Time Scale fails automatically, as the provision for grant of Junior Selection Grade, Senior Selection Grade and Super Time Scale came to be abolished with effect from 01.01.1996. As has been stated in the counter affidavit, “Kalawadhi” of five years was fixed for grant of Senior Selection Grade, but since the policy of the State Government itself, for grant of Selection Grade, came to be abolished with effect from 01.01.1996, no further promotion could be granted to the petitioner to Senior Selection Grade, as he would not have completed the period of five years from the date with effect from which, he was granted promotion to Junior Selection Grade.

14. Mr. Man Mohan, learned counsel appearing on behalf of the petitioner, has attempted to convince me by referring to a Division Bench decision of this Court dated 16.05.1997, passed in L.P.A. No. 1162 of 1996, that the right of promotion cannot be whittled down by Executive Circular, prescribing “Kalawadhi” for grant of promotion.

15. The said decision has no application in the present facts and circumstances of the case. Since I am of the considered view that the petitioner cannot claim by way of

right, promotion or consideration for promotion to a post, with effect from date on which the vacancy arose, no relief can be granted to the petitioner.

16. It is also the case of the petitioner that he ought to have been granted promotion against need based posts, created in the light of the State Government Resolution dated 08.02.1999. I do not find any legal right which the petitioner could establish before this Court, for grant of such promotion. No person, junior to the petitioner, has been granted promotion against need based posts, created in the light of the said Resolution dated 08.02.1999, with effect from the date, prior to the petitioner's date of retirement, upon attaining the age of superannuation. No relief can be granted to the petitioner in the facts and circumstances of the case, as noted above.

17. This application is, accordingly, dismissed.

18. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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