

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.105 of 2015

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Hari Narayan Pandey son of Late Janardan Pandey, resident of village- Nagwan,
P.S.- Naubatpur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Transport Commissioner, Bihar, Patna
2. The Transport Commissioner, Bihar, Patna
3. The Administrator, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar
4. The Chief of Administration, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar
5. The Chief of Operation, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar
6. The Chief Mechanical Engineer, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar
7. The Financial Advisor and Chief Accounts Officer, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar
8. The Divisional Manager, Patna Division, Bihar State Road Transport Corporation, Bankipur, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Adv.
For the Respondent/s : Mr. Ashok Priyadarshi, GA-4
For the BSRTC : Sri P.K. Verma, Sr. Adv.
Mr. N.K. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 06-04-2015

Heard learned counsel for the parties.

2. Having regard to the fact that the respondents in their counter affidavit and supplementary counter affidavit have made it clear that no one in the Bihar State Road Transport Corporation has been given the benefit of time bound promotion when the same was withdrawn by the State Government, this Court would find it difficult



to issue any direction for granting benefit of time bound promotion to the petitioner, inasmuch as, it has become due to them only on or after 1.1.1996. Thus, when the Corporation has not given this benefit to any one to whom time bound promotion became due on or after 1.1.1996,, no exception can be made to any one of the petitioners.

3. The only submission of Mr. Mishra, learned counsel for the petitioners, that an earlier order was passed in favour of the few persons for granting time bound promotion in the year 2011 though to them also become due on or after 1.1.1996 has been also sought to be immediately clarified by Mr. P.K. Verma, learned counsel, by saying that they too have not given the benefit of such order. He in this regard has explained that earlier an order was passed by the learned single Judge to consider such claim and in terms thereof though an order was issued but when ultimately it was found that such payment cannot be made by the Corporation, it was explained by this Court in the connected contempt application and the contempt application has been dismissed.

4. In the considered opinion of this Court, once this aspect would become clear that the petitioners are not entitled for such time bound promotion on account of the withdrawal of the scheme itself both by the State Government and the Transport Corporation, there would be no difficulty in holding this writ application to be



misconceived and ill advised. In any event, the right to equality being a positive right cannot be enforced in a negative manner and this court is not supposed to perpetuate any illegality that may have been committed by the Corporation in issuing an order of time bound promotion to such employees with the date on or after 1.1.1996. It is this aspect of the matter which has been explained by the Apex Court in the case of **State of Bihar Vs. Upendra Narayan Singh & Ors.** reported in **2009(5)SCC 65** relevant portion whereof reads as follows:-

"67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35], Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and

another [(2000) 9 SCC94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737] ."

5. That being so, this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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