

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15526 of 2006

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Shankar Lal, Retired Designer, son of Late Panna Lal, resident of Mohalla Mithapur, P.S.- Jakkanpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Industrial Development Commissioner, Department of Industry, Government of Bihar, New Secretariat, Patna.
2. The Director, Upendra Maharathi Design Research Institute, Patna-13.
3. Additional Director, Upendra Maharathi Design Research Institute, Patna-13.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Senior Advocate
Mr. Sanjay Kumar

For the Respondent/s : Mr. Raisul Haque S.C. 4
Mr. Obaidullah, A.C. to S.C. 4

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 27-04-2015

Heard Mr. Yugal Kishore, learned Senior counsel in support of the writ petition and A.C. to S.C. 4 on behalf of the State.

A counter affidavit has been filed on behalf of respondent nos. 1, 2 and 3. Rejoinder thereto has been filed by the petitioner.

Indisputably, the petitioner had earlier filed writ petition in this Court vide C.W.J.C. No. 6368 of 1990 (Shankar Lal versus The State of Bihar and Ors.) which was disposed of by order dated 3.10.1991 (Annexure-2) directing the concerned respondent for consideration of the case of the petitioner for his promotion in accordance with law. The said direction was issued considering the submissions of the petitioner that he served as the Junior Designer in



the Upendra Maharathi Design Research Institute created under the Industry Department of the Government and retired without any promotion. The Court also noticed the contention of the petitioner while disposing of the said writ petition that a person junior to him in the service was considered and granted promotion to the post of Development Officer. The Industrial Development Commissioner of the Government in the light of the said order of this Court considered the claim of the petitioner and rejected the same vide order dated 18.2.2006 (Annexure-1) which has been impugned in the present writ petition. In substance, the impugned order records two reasons for non-grant of promotion, firstly there was no promotional post in the cadre to which the petitioner belonged and as such, he was granted two time bound promotions in terms of the policy decision of the Government contained in Memo. No. 10770 dated 30.12.1981 and secondly, the case of the petitioner could not be equated with the case of Sri Ramadhar Singh who was an employee borne on the cadre of the Industry Department. The petitioner belonged to the cadre of non-gazetted employees whereas Sri Ramadhar Singh belonged to the cadre of gazetted employees. The cases of the two, therefore, cannot be equated.

Mr. Yugal Kishore, while making submissions in support of the writ petition, has submitted that any employee of the State or the



baby of the State has a legal right to be given at least two avenues of promotion during the service tenure. He has, in this regard, rightly relied on *Council for Scientific Research vs. K.G.S. Bhatt (1989) 4 SCC 635* and the judgment rendered by the Apex Court in the case of *State of Tripura and Ors versus K.K. Roy (2004) 9 SCC 65*. There cannot be a dispute with regard to the legal position enunciated in Council for Scientific Research (supra) that the opportunity for advancement in service career to an employee is a requirement for progress of any organization. It is an incentive of personal development as well. The Apex Court while dealing the case of *State of Tripura and Ors versus K.K. Roy (supra)* noticed the aforesaid principles of law and the factual matrix of the case and held that the petitioner was entitled to grant of two higher grade one upon expiry of period of 12 years from the date of his joining of service and other from the date of expiry of 24 years from the date of joining of service. Present is the case where the petitioner superannuated from service w.e.f. 30.11.1991. In the light of directions issued by the Apex Court in diverse judgments, some of which has been relied upon and referred by the Counsel for the petitioner and referred hereinabove, the State of Bihar came out with a policy decision called Assured Career Progression Scheme which was made effective in the year 1999. This was deemed necessary in view of the



decisions of the Apex Court and also in support of the policy of grant of two time bound promotions to such employees who was not granted any promotion during the entire service tenure. Unfortunately, in the present case, the petitioner retired in the year 1991. There is no dispute at the bar that before his retirement, he was granted two time bound promotions.

Mr. Yugal Kishore has relied on *Dr. Paras Nath Prasad vs. State of Bihar 1990 (2) P.L.J.R. 248* in order to submit that even before the aforesaid judgment of the Hon'ble Supreme Court, a Division Bench of this Court had held that an employee serving the State or the agency of the State would be entitled to at least two promotions and actual monetary benefit thereof.

In my view, the submission of the Mr. Kishore based on *Dr. Paras Nath Prasad (supra)* appears to be misplaced. In the said case, the State Government had denied promotion to the petitioner on misconception of certain judgments/decrees of the Court. Subsequently, he was granted promotion on notional basis without payment of monetary benefit thereof. In that context, this Court in the aforesaid judgment held that promotion is granted to such employee is not a promotion in vacuum. If the lawful claim of a citizen is denied and subsequently granted at the behest of the Court on notional basis then surely, the employee would be entitled to

monetary benefits flowing therefrom. This is not the case at hand. As I have already noticed, this Court on earlier occasion in the case of the petitioner had directed for consideration of his claim in accordance with law considering the fact that there was no such claim examined by the respondents and further that the case of the petitioner was based on discrimination. Mr. Yugal Kishore has rightly not argued his case based on discrimination considering the reasons which have been assigned in the impugned order (Annexure-1). The other submission of the petitioner for grant of relief as noticed hereinabove, in my view, does not hold much water.

In the result, the writ application fails. It is, accordingly, dismissed. No cost(s).

(Kishore Kumar Mandal, J)

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