

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2992 of 2014

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1. (Dr.) Ram Prasad Sah S/O Late Sonu Sah At Present- Working As A Lecturer In Bihar Institute Of Silk And Textile, Nathnagar, Bhagalpur, District- Bhagalpur

2. (Dr.) Subodh Kumar Vishwakarma S/O Late Tarni Prasad Vishwakarma Resident Of Mohalla- Parbatti, Bhagalpur City, District- Bhagalpur, At Present- Working As A Lecturer In Bihar Institute Of Silk And Textile, Nathnagar, Bhagalpur, District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Principal Secretary, Department Of Industry, Government Of Bihar, Patna

3. The Under Secretary, Department Of Industry, Government Of Bihar, Patna

4. The Director, Handloom And Sericulture, Department Of Industry, Government Of Bihar, Patna

5. The Principal, Bihar Institute Of Silk And Textile, Nathnagar, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha

For the Respondent/s : Mr. Shashi Shekher Prasad Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-12-2015

Heard learned counsels for the parties.

The two petitioners had earlier approached the High Court for a direction upon the respondents to grant them benefit of promotion. The Writ Court disposed off the writ application directing the concerned authority to take a decision in this regard. The decision taken by the Principal Secretary, Industry, Government of Bihar, Patna, dated 19.10.2012 (Annexure-6) has rejected such claims for the reasons indicated therein. Petitioners are seeking quashing of Annexure-6 and a direction upon the respondents to

grant them promotion as well as benefit of A.C.P. and M.A.C.P.

The Court has gone through the impugned order. The benefit of promotion, which these petitioners are looking for are not available to them for the reasons indicated therein that these petitioners were directly appointed on the post of Lecturers as special case. The 1987 Rules, which these petitioners are pressing into service do not relate to them and, therefore, the question of consideration of promotion in terms of the rules, contained in Annexure-3, does not apply to them and this is the finding, which has been given by the Principal Secretary, which in the opinion of the Court is correct finding after perusing Annexure-3, the 1987 Rules.

The petitioner no. 1 has been given benefit of ACP and MACP. From perusal of the supplementary counter affidavit especially Annexure-Q, which is the decision of the Screening Committee, it appears that the petitioner no. 2 does not suffer any infirmity from being granted the benefit of ACP and MACP, but since the committee did not have the ACRs, placed before them, therefore, no final decision was taken.

The ACRs are to be recorded by superiors and are not maintained by a government employee. A citizen, therefore, cannot be punished for what he is not supposed to do. The default is on the part of the superior i.e., the controlling authority as well as the superior authority.

The Court, therefore, refuses to interfere with the impugned order, contained in Annexure-6, as it does not suffer from any vice. However, it gives direction upon all the respondents here headed by the Principal Secretary, Department of Industry, Government of Bihar, Patna including the Director, Handloom and Sericulture, Department of Industry, Government of Bihar, Patna that the ACR of the petitioner would be completed and a decision in terms of Annexure-Q for grant of the benefit shall be taken thereafter. All this must be done within a period of three months from the date of communication / production of a copy of this order. The time-frame indicated here must be adhered to. Otherwise, the concerned respondents will have to appear before this Court for their omission to carry out the judicial direction.

Writ application stands disposed off with limited direction in this regard.

(Ajay Kumar Tripathi, J)

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