

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1044 of 2008

IN

Civil Writ Jurisdiction Case No 5700 of 2005

- =====
- 1 The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna
 - 2 The Commissioner-cum-Secretary to Government in the Personnel and Administrative Reforms Department, Old Secretariat Building, Patna
 - 3 The Deputy Secretary to Government in the Personnel and Administrative Reforms Department, Old Secretariat Building, Patna

.... Appellant/s

Versus

- 1 Nathuni Prasad Singh, son of late Bhikho Singh, resident of Village – Panchgachhia, PS – Bihra, District – Saharsa
- 2 The Member, Board of Revenue –cum- Chairman, Departmental Promotion Committee, Old Secretariat Building, Patna

.... Respondent/s

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For the Appellant/s : N o n e

For Respondent No 1 : M/s Dharmendra Kr Paswan & Pankaj Kr Sinha

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 26-03-2015

Earlier also State of Bihar, the appellant was not vigilant in pursuing this appeal and, accordingly, noticing their absence, by order dated 11.01.2011, the appeal was dismissed for non-prosecution. It was restored on 30.04.2012 and again when it was called out yesterday, there was no representation on behalf of the State of Bihar – appellant. The private respondent, who was the writ petitioner, was represented. We, accordingly, ordered for its listing today for final disposal under the heading for dismissal if there was no representation. Today also, inspite of repeated calls, no one appears for the State. Private respondent is represented.

2 From the judgment of the learned Single Judge, the only

controversy that arises appears to be in relation to the fact that the writ petitioner, who is respondent No 1, was due for promotion as Registrar with effect from 22.02.1994 but the order was issued after considerable delay on 26.08.1998 with retrospective effect. The said order provided that for the period for which he has not worked, he will not get any monetary benefit or other benefit. The writ petitioner represented against this unfair attitude of the State but his representation was rejected in terms of Rule 58 of the Bihar Service Code. This is what was under challenge before the learned Single Judge.

3 Learned Single Judge, in our view, rightly held that the delay in granting promotion not being the fault of the writ petitioner, he could not be made to suffer for the laches on the part of the Government. The writ petitioner was entitled to be considered for promotion and granted the same but the said exercise got inordinately delayed for no fault of the petitioner. He could, thus, be not deprived of benefit of retrospective promotion. We may only add what Chief Justice **Chagla** said in this regard over half a century back in the case of **All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :**

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

4 Thus, we find no merit in the appeal. It is dismissed accordingly. Stay, granted earlier, stands vacated.

5 Consequently, the writ petitioner would be entitled to all consequential benefits including consequential promotions and seniority, as granted by the learned Single Judge.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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