

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.1614 of 2014**

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1. Abhay Kumar Choudhary Son Of Shri Badri Narayan Choudhary Resident Of Village - Namachak Haidar, Police Station - Chak Mahesi, District - Samastipur, At Present Posted As Agriculture Officer, Hayaghat, Darbhanga, Police Station - Hayaghat, In The District Of Darbhanga

.... .... Petitioner/s

Versus

1. The State Of Bihar, Through the Director, Agriculture, Government of Bihar, Patna
2. The Director, Agriculture, Government of Bihar, Patna
3. The Agriculture Production Commissioner, Government of Bihar, Patna
4. The District Magistrate, Samastipur, District - Samastipur
5. Mirtunjai Kumar son of Sri Basudeo Prasad, resident of New Area, Nawadah, P.S. Nawadah, District- Nawadah

.... .... Respondent/s

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**Appearance :**

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|----------------------|---|------------------------------------------------|
| For the Petitioner/s | : | Mr Upendra Prasad<br>Mrs. Veena Kumari Jaiswal |
| For the Respondent/s | : | Mr. GA-12 Ajay<br>Mr Md. Khurshid Alam         |

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL JUDGMENT**

**Date: 22-06-2016**

Heard counsel for the petitioner and the State as well as counsel for the private respondents.

Annexure-1 is the order which has been passed by the Director, Agriculture, Government of Bihar and is dated 29.10.2013. This order has been passed by the Director in light of the direction issued in CWJC No.18640 of 2011. Petitioner was praying for grant of promotion from an earlier date, to be precise 16.9.2003, instead of the year 2010. The primary reason for making such a prayer for



shifting the date of promotion is that the petitioner had completed the Kalawadhi of 8 years on that date and that makes him eligible, if not entitled to promotion to the next higher post. Matter was heard in the previous writ application and a direction was issued upon the Director to decide. A detailed order has been passed by the Director in Annexure-1 where not only the rules governing such grant of promotion but even the service history of the petitioner, the other persons, who have been granted promotion, the seniority position of those who have been granted promotion vis- a- vis the present petitioner as well as the history of the promotion granted from time to time against the vacancies which arose have been considered and a clear finding has been given that since the petitioner stood at serial no.421 in terms of seniority, the vacancies, which were created or were available, were not adequate enough for the petitioner to be promoted.

Counsel for the petitioner tries to bring certain infirmities with regard to the factual findings given by the Director. That is based on the so-called observation and finding which had emerged earlier in an order passed in Annexure-3 but this Court cannot be unmindful of the fact that seniority position of one of the candidates was altered from 432 to 399 by virtue of a judicial order passed by the High Court. This Court has no power to go behind the correctness or

otherwise of such a direction which led to alteration in the seniority position of private respondent, who is represented through a counsel. The Court is neither sitting in appeal nor in review of such a decision. The last person, who had been granted promotion against the vacancies based on the seniority, was at serial no.420.

The reason for non- grant of promotion to the petitioner is obvious.

So far as Kalawadhi is concerned, Kalawadhi does not create a right for promotion. It only brings a person within the zone of consideration for such promotion. There are many other factors which go into consideration before an order of promotion can be passed against an employee. The expectation of the petitioner, therefore, to be promoted from a back date merely on fulfilling Kalawadhi has also been dealt with by the Director correctly and the finding or the rejection order, therefore, are cogent and valid and do not suffer from any irrationality.

Writ has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

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