

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1671 of 2012

IN

Civil Writ Jurisdiction Case No. 9938 of 2011

- =====
1. The State of Bihar
 2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
 3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
 4. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
 5. The Director, Indigenous Medicine, Department of Health, Government of Bihar, Patna.
 6. The Deputy Director (Unani), Department of Health, Government of Bihar, Patna.

.... Appellants

Versus

Dr.Shafique Azam, son of Late Dr. S.M. Mojibul Haque, resident of flat no. 305, Gulsitan Apartment, Mohalla- Garhua Tola, Sultanganj, P.S. Sultanganj, District-Patna.

.... Respondents

=====

Appearance :

For the Appellants : Mr. Kumar Kaushik, Advocate.
For the Respondent : Mr. S.A. Nasarwasi, Advocate.
Mr. Janki Nandan Prasad, Advocate.
Mr. Brijnandan Prasad, Advocate.
Mr. Obaidur Rahman, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-03-2016

Heard learned counsel for the appellant and the respondent.

2. The challenge in the present Letters Patent Appeal is to an order dated 21st of February, 2012 passed in C.W.J.C. No. 9938 of 2011, whereby the respondent, the writ petitioner, was ordered to be granted financial benefits of the post of Reader with effect from 26th of July, 1996 and of the post of Professor with effect from 26th of July, 2001 i.e. from the day he was notionally promoted to such posts.

3. The sole argument raised by the appellant is that there was no junior promoted in the year 1996 or in the year 2001 which could confer a right on

him to seek promotion from the aforesaid dates. Since the promotion is notional, he is not entitled to salary from the date he was notionally promoted but is entitled to salary from the date he actually started working against the promotional post.

4. We do not find any merit in the said argument. The fact is that the respondent stands promoted, though notionally, on the post of Reader with effect from 26th of July, 1996 and thereafter as Professor with effect from 26th of July, 2001. Therefore, the appellant admits the genuineness and entitlement of the claim of the writ petitioner for promotion as Reader and Professor on the dates from which he was granted notional promotion. Once a candidate is entitled to be promoted and has been notionally promoted, the natural consequence will be that all financial benefits will accrue to him. The argument that he is not entitled to salary on the principle of ‘no work no pay’ is not applicable for the reason that it was the inaction of the State which prevented the writ-petitioner from discharging higher duties and responsibilities. For such inaction of the State, an employee cannot be deprived of his right of promotion, more so, when the same has been recognized.

5. In view of the said fact, we do not find any merit in the present Letters Patent Appeal. The same is, thus, dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

P.K.P.
N.A.F.R.

U			
---	--	--	--