

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1811 of 2012

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1. The State Of Bihar.
 2. The Commissioner-Cum-Secretary, Water Resources Department Sichai Bhawan, Government of Bihar, Patna.
 3. The Under Secretary, Water Resources Department Sichai Bhawan, Government of Bihar, Patna.
 4. The Commissioner, Finance Department Government of Bihar, Old Secretariat Building, Patna.
 5. The Chief Engineer, Water Resources Department, Government of Bihar, Dehri-On-Sone, District Rohtas.
 6. The Executive Engineer, Sone Canal Division, Buxar.
 7. The Executive Engineer, Flood Control Division, Buxar.
 8. The District Magistrate, Rohtas at Sasaram.
 9. The District Magistrate, Buxar.

.... Appellant/s

Versus

Baban Upadhyay S/O Late Indradeo Upadhyay Resident Of Village Khakharahi, P.O. Chuni, P.S. Itarhi, District Buxar, Correspondence Clerk Office Of Executive Engineer, Sone Canal Division, Buxar (Now Retired).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Anjani Kumar, AAG 6 with
Mr Deepak Sahay Jamuar, AC to AAG 6

For the Respondent/s : Mr Kamal Nayan Choubey, Sr Advocate with
M/s Ambuj Nayan Choubey, Yogendra Kr Dwivedy,
Dineshwar Pandey & Ms Ritu Priyadarshni, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-03-2016

State is in this intra-Court appeal against the judgment and order dated 29.04.2011 passed in CWJC No 15616 of 2006 (*Baban Upadhyay –Versus- State of Bihar & Others*). The writ petition, filed

by the contesting respondent herein, was allowed. The Writ Court held the writ petitioner to be entitled to the time bound promotion and ACP, as claimed and rejected the contentions of the State. It is this, that has brought the State in appeal.

2 We have heard Shri Anjani Kumar, learned AAG 6 and Shri Kamal Nayan Choubey, learned Senior Counsel appearing for the respondent, the writ petitioner and, with their consent, this appeal is being disposed of at this stage itself.

3 The facts are not in dispute. The writ petitioner/respondent was working in work charge establishment on daily wages as a 'Meth' since 1973. With effect from 27.08.1983, he was permanently absorbed in the Department. Subsequently, he was reverted as Peon and then again on 17.05.1990, he was now absorbed substantively with effect from 21.03.1981 as Correspondence Clerk. From the service book appended by the State to the counter affidavit in the writ proceedings, it is clear that he was granted seniority and pay scale only with effect from 21.03.1981 when his services were regularized in the regular establishment. According to State, this absorption from daily wages itself would be deemed to be a promotion and, thus, would take place of the first time bound promotion. The learned Single Judge rejected the argument and rightly so. Prior to 1981, the writ petitioner was merely a daily wager. He was not on permanent

post of the State. Service book clearly states that he was granted continuity of service, seniority and pay scale only with effect from 21.03.1981 when he was substantively absorbed in permanent establishment. That was his entry in service and not a promotion, though before the learned Single Judge, it was argued by the State that once the writ petitioner had got or would get time bound promotion, he would not be entitled to ACP. This is not urged before this Court in appeal and rightly so. Grant of ACP is not dependent or conditioned upon granting time bound promotion. They are two different incentives against stagnation.

4 Thus, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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