

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12182 of 2013

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Khurshid Ahmad Khan, son of Late Md. Maqsud Khan, Permanent resident of Village Godana, P.S. Riwil Ganj District Saran.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department Of Revenue and Land Reform, Bihar Patna.
2. The Principal Secretary, Finance Department, Govt. Of Bihar, Patna.
3. The Secretary, Govt. Servant Claim and Personal Grievances Department, Govt. Of Bihar, Patna.
4. The Collector Saharsa.
5. The Accountant General Bihar Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Amarendra Narayan, Adv.

For the State : Mrs. Mamrata Mishra, G.A.-6

Mr. Alok Ranjan, A.C. to G.A.-6

For the Accountant General: Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-11-2016

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General.

2. Today, supplementary counter affidavit has been filed by the State, but no additional fact has been brought for the consideration of this Court.



3. In the present case, the petitioner is challenging the order containing Memo No. 973(3) dated 19.12.2006, whereby the petitioner has been granted promotion in the pay scale of Rs.6500-10,500/- with retrospective effect from 9.10.2000, but the promotion is stated to be notional and made him entitled the salary from the date of his joining.

4. In the present case, limited grievance has been raised by the petitioner that he has wrongly been deprived of salary on following facts; the benefit of promotion was conferred to certain persons, who are junior to him, but the petitioner was deprived of the same. Hence, the petitioner was compelled to approach this court by filing C.W.J.C. No. 15618 of 2005 bringing to the notice of this Court about the hostile discrimination and claiming that he has all requisite qualifications for the promotion, but in an illegal manner he has been deprived of the same, even though the petitioner has good A.C.R. enough for promotion. During the pendency of the said writ application, the petitioner was granted notional promotion, but did not satisfy with the notional promotion. This Court vide order dated 24.09.2010 dismissed the said writ application with a liberty to raise his grievance.

5. In this writ application, the petitioner has only limited



grievance that when the juniors to him have been granted promotion along with salary, his deprivation of promotion along with salary violates the Articles 14 and 16 of the Constitution of India and granting only notional promotion is not proper compensation to his woes.

6. Though it is a fact that the petitioner has no right for promotion, but has a right for consideration of promotion, his case was not placed before the authority for consideration of promotion. When the juniors to him were promoted ignoring the case of the seniors and certainly it amounts to hostile discrimination and the State cannot be allowed to take benefit of its own wrong. Firstly, depriving the petitioner for promotion and then to say that he is not entitled for the benefit of salary, but admittedly, when junior persons have been granted the promotion along with salary, the petitioner is also entitled to same relief.

7. Learned counsel for the State has submitted that this Court cannot grant the benefit of salary as the petitioner had not been discharging the duty on the promoted post during that period. But, it is required to be noted that the petitioner could not discharge the duty on the promoted post not because of his action, but because of wrongly treated by the respondent authorities.



So, the respondent authorities cannot saddle its responsibility on the head of the petitioner.

8. In this view of the matter, the respondent authorities are directed to modify the order dated 19.12.2006 in the term that the petitioner is entitled for the salary from the date of promotion. As the petitioner has already superannuated, the respondent authorities are directed to release the salary for the period he has been treated to have been on notional promotion within a period of three months from today.

9. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	02.12.2016
Transmission Date	

