

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1326 of 2013

In

Civil Writ Jurisdiction Case No.13263 of 2007

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1. The State Of Bihar
 2. The Secretary, Home (POLICE), Government Of Bihar, Old Secretariat, Patna
 3. The Inspector General (C.I.D.), Old Secretariat Patna
 4. The Director, Forensic Science Laboratory, Bihar, Patna

... .. Appellant/s

Versus

Dhananjay Mishra Son Of Late Kailashpati Mishra Retired As Senior Science Officer, Forensic Science Laboratory, Bihar, Patna, At Present Resident Of Govind Chak, Karma Bhagwan, Police Station Aurangabad, In The District Of Aurangabad

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Gyan Shankar, AC to GP-2
For the Respondent/s : Mr. Awadhesh Kumar Pandit, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 31-10-2017

The instant Letters Patent Appeal has been filed by the appellants-State against the order dated 18.6.2013 passed in CWJC No. 13263 of 2007, whereby the Writ Court directed the appellants-State to grant the scale of Deputy Director (FSL) equivalent to Junior Selection Grade and the writ petitioner was held to be entitled to replacement revised scale from time to time.

2. The relevant facts, necessary for adjudication of the present Letters Patent Appeal, lies in a narrow compass. The writ petitioner-respondent herein was appointed on the post of Technician (Non-Gazetted) on 21.10.1964. He was granted regular



promotion on the post of Technical Officer (Non-Gazetted) with effect from 21.6.1973. He was further granted provisional promotion vide notification dated 2.9.1983 on the post of Senior Scientific Officer (Gazetted) which was made regular vide notification No. 9125 dated 8.9.1986. In the year 1992, the case of the writ petitioner was considered for grant of regular promotion to the post of Deputy Director. He was found fit by the DPC. However, on account of less number of available vacancy, he was not granted promotion. The writ petitioner was however, granted first Time Bound Promotion on completion of 10 years as Senior Scientific Officer (FSL). The writ petitioner had approached earlier this Court in CWJC No. 4801 of 1999 for grant of promotion to the post of Deputy Director with effect from 3.9.1988 and the said writ petition was disposed of with a direction to the writ petitioner to file fresh representation and the respondents were directed to consider the case of the petitioner for promotion if promotion had been granted to junior in 1997 ignoring the case of the petitioner. The said representation was rejected by the respondent on 25.4.2005 and aggrieved by the said decision, CWJC No. 13263/2007 was filed by the writ petitioner wherein he has prayed for quashing of the order dated 25.4.2005 and for a direction to the respondents to make payment of



retirement benefit with all consequential benefits of promotion to the writ petitioner. The writ petition was finally heard and disposed of by oral order dated 18.6.2013. The writ court declined to grant relief to the petitioner for grant of promotion to the substantive post of Deputy Director and the writ court held out that no person junior to the petitioner has been granted promotion. But, the writ court observed that in case any junior have been notionally granted promotion with effect from the date when the petitioner was in service, the petitioner would have right to claim promotion. However, the writ court accepted the claim of the writ petitioner as to grant of scale of Deputy Director (FSL) on account of Time Bound Promotion and the writ court held out that the petitioner would be entitled to replacement scale of Deputy Director (FSL) revised from time to time. The instant Letters Patent Appeal has been filed under Clause 10 of the Letters Patent by the State of Bihar against that part of the direction of the writ court whereby the writ court held out that the petitioner would be entitled to the scale of Deputy Director (FSL) equivalent to junior selection grade on Time Bound Promotion and the petitioner would be entitled to the replacement scale.

3. We have heard the counsel for the appellants at length. Counsel for the appellants has challenged the part of the



order of the writ court dated 18.6.2013 on the ground that the pay scale of Deputy Director was revised from time to time, whereas the writ petitioner, who was holding the post of Senior Scientific Officer (Junior Selection Grade) was not entitled to the pay scale as there was no revision of pay scale of Senior Scientific Officer.

4. In this case a counter affidavit was filed on behalf of the writ petitioner-respondent on 20th April, 2017, wherein the writ petitioner-respondent has stated in para-9 that the respondents in the writ petition, appellants herein had misled this Court. The pay scale of junior Selection Grade, Senior Scientific Officer and the Deputy Director are same and in fact there is no provision of Junior Selection Grade of Senior Scientific Officer and Time Bound Promotion is given only where regular post are not available. In other words, the Time Bound Promotion is resorted to as ante-stagnation measure on account of non-availability of promotional post. In para-10 it has been stated that the writ petitioner was eligible for grant of pay scale of Deputy Director but he was granted the pay scale of Rs. 6500-10500, the pay scale of Senior Scientific Officer, i.e. the post on which the writ petitioner was promoted provisionally with effect from 2.9.1983 which was made regular vide notification dated 2.9.1986. In other words, the stand of the writ petitioner in the instant case is that the



respondent-authorities have acted in most arbitrary manner in refusing to grant promotion despite availability of the vacancy in teeth of their own circular dated 9.1.1992, whereby decision was taken to grant promotion from the date of vacancy and undisputedly in the instant case vacancies were available yet the writ petitioner was denied regular promotion to the post of Deputy Director and he was also denied even the benefit of Time Bound Promotion on completion of 10 years on the post of Senior Scientific Officer (FSL). The pay scale of Senior Scientific Officer (FSL) was Rs. 6500-10500/- and as such allowing him the same scale after completion of ten years in 1993 when he was entitled to time bound promotion is not proper.

5. We have considered the materials available on record. The writ court on consideration of the materials available on the record has held out that no person junior to the petitioner has been granted promotion to the post of Deputy Director and as such the writ court declined to grant any positive direction for grant of regular promotion as Deputy Director. Although we find that the averments made in the counter affidavit filed in the Letters Patent Appeal on behalf of the writ petitioner-respondent has not been controverted by the appellants-State which is indicative of the fact that there was vacancy available and the writ petitioner



was found fit for promotion by the DPC and we also find the circular of the State Government with regard to grant of promotion from the date of availability of the vacancy, but instead of going into the controversy, whether the respondents were justified in refusing the regular promotion to the writ petitioner-respondent herein in the appeal, we thought it appropriate to examine the claim of the appellants in the instant appeal.

6. The only contention of the appellants in the instant case is that at the relevant time the Senior Selection Grade scale of the Senior Scientific Officer (FSL) was equivalent to Deputy Director. However, subsequently, the pay scale of Deputy Director was revised but no corresponding revision was made in the pay scale of Senior Scientific Officer and as such the writ court committed error in directing grant of pay revision of Deputy Director to the writ petitioner.

7. We have considered the fact that the respondent-writ petitioner was granted regular promotion as Senior Scientific Officer (FSL) with effect from 19.2.1983 and the pay scale of the Senior Scientific Officer was revised as Rs. 6500-10500. If the object of Time Bound Promotion is to do away stagnation and to provide personal promotion as the concept of Time Bound Promotion is to grant personal promotion by upgrading the post



temporarily then in that situation, the writ petitioner is justified in contending that there is no question of denying revised pay scale of Deputy Director as the promotional post of Senior Scientific Officer is the post of Deputy Director. We also find substance in the claim of the writ petitioner that in 1983 he was granted promotion as Senior Scientific Officer (FSL) then after 10 years he cannot be subjected to the same pay scale which is admissible to the Senior Scientific Officer. In that situation the Time Bound Promotion on completion of 10 years in 1993 becomes illusory.

8. In the totality of the fact situation, we are of the view that the writ petitioner was granted Time Bound Promotion in the pay scale of Deputy Director as personal promotion, he is entitled to the monetary benefit of pay revision corresponding to the post of Deputy Director otherwise denying him the pay revision corresponding to the Deputy Director would amount to nullifying the effect of Time Bound Promotion granted to the writ petitioner in 1993. In view of the same, we are of the view that the writ court has committed no illegality in directing the respondents to grant the scale of Deputy Director and its replacement revised scale from time to time.



9. Accordingly, the present Letters Patent Appeal filed on behalf of the appellants-State is dismissed as devoid of any merit.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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