

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1708 of 2015
IN
Civil Writ Jurisdiction Case No. 1190 of 1999**

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Nagendra Rai, son of Late Ram Lakhan Rai, resident of Village- Malikour, P.S.
Pusa, District- Samastipur.

.... Petitioner / Appellant

Versus

1. The State of Bihar through the Agriculture Production Commissioner and Secretary to Agriculture Department having his office in Vikas Bhawan, New Secretariat P.S. Sachivalaya, District- Patna.
2. The Additional Secretary, Government of Bihar, in the Department of Agriculture Incharge Establishment having the office in Vikas Bhawan, New Secretariat P.S. Sachivalaya, District- Patna.
3. The Director Agriculture, Bihar, Patna having his office at Vikas Bhawan, New Secretariat, P.S. Sachivalaya, District- Patna.
4. The Director, Administration, Agriculture Department having his office in Vikas Bhawan, P.S, Sachivalaya, District- Patna.
5. The Finance Commissioner and Secretary Government of Bihar having his office at old Secretary P.S. Sachivalaya, District- Patna,
6. The Joint Secretary, Agriculture Department having his office in Vikas Bhawan, P.S. Sachivalaya, District - Patna.
7. Sri B.K. Sahay, father's name not known to the petitioner, Incharge Joint Director of Agriculture, Adaptive Research, having his office in Meethapur, P.S.- Jakkanpur, District- Patna.

.... Respondents /Respondents.

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Appearance:

For the Appellant/s : Mr. Mukeshwar Dayal and
Mr. Vikas Mohan, Advocates.

For the State : Mr. Durgesh Nandan, AAG 14.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 06-09-2017

Heard learned counsel for the appellant and learned
counsel for the State.

2. Writ Application of the present appellant was dismissed
by the learned Single Judge vide order dated 03.07.2015. Prayer in the



Writ Application was to grant him regular promotion to the post of Assistant Director, Agriculture in Junior Selection Grade from an earlier date than what he was granted and he also claimed for regular promotion on the post of Deputy Director, Agriculture, which was a Senior Selection Grade, with effect from 01.03.1994 as well as Super Time Scale by promoting him to the post of Joint Director, Agriculture with effect from 01.07.1998.

3. From a reading of the entire pleadings and discussions made in the impugned order the Court has no hesitation in recording that filing of the Writ Application was by way of wagering rather than assertion of a right. Effort was made by the appellant obviously to carry back home a higher pay scale meaning a higher retirement benefit. No such right has come to be established after a detailed consideration of the submissions made on behalf of the appellant.

4. Junior Selection Grade was granted to the appellant on 01.12.1993. A plea for grant of such benefit from a prior date was negated as no person had been given that benefit. The learned Single Judge took note of the fact that for grant of the next higher pay scale there was a Kalawadhi of five years, which was not reached, and before the said Kalawadhi could be reached, the government as a policy decision, on the recommendation of the Fifth Pay Revision Committee, abolished the concept of Junior / Senior / Super Time



Selection.

5. The right which the appellant, therefore, was trying to claim was no longer in existence since provision and policy stood abolished from 01.01.1996.

6. It is also taken note of by the learned Single Judge that right of consideration of promotion does not flow from the date when the vacancy arises; in support thereof many a decisions of the Hon'ble Supreme Court has been taken note of and the final conclusion is culled out from Paragraph 11 of the said order.

“11. The petitioner's claim that he should have been granted promotion to Junior Selection Grade with effect from 01.03.1989, when, according to him, the vacancy arose and he was entitled for such promotion on the basis of his seniority in the cadre, in my opinion, cannot be entertained for following three reasons:-

(i) No Statutory Rule has been brought to my notice, governing service condition of the Members of Bihar Agriculture Service (Chemistry), Category-III, which mandates grant of promotion with effect from the date, the vacancy arise.

Learned counsel for the petitioner has not been able to satisfy this Court, with reference to any statutory requirement for grant of promotion with effect from a retrospective date, even if the pleading that the petitioner was eligible for consideration for such promotion on 01.03.1989, as per seniority is accepted.

In my opinion, the petitioner has no legal right to claim his promotion to Junior Selection Grade, with effect from 01.03.1989 when, according to him, the vacancy arose. This view finds support from Supreme Court decision in case of **“Union of India and Ors. Vs. K.K. Vadera and Ors.”** reported in **“1989 Supp. (2)**



SCC 625”, Paragraph - 5 of which, reads as follows:-

“5. There is no statutory provision that the promotion to the post of Scientist ‘B’ should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist ‘B’ should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

The view taken by Supreme Court in case of Union of India and Ors. Vs. K.K. Vadera and Ors. (*Supra*), has subsequently been referred to and relied upon in another decision of Supreme Court in case of “*Nirmal Chandra Sinha v. Union of India & Ors.*” reported in “(2008) 14 SCC 29”, Paragraph – 7 of which, reads as thus:-

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not



from the date of occurrence of vacancy or creation of the post vide *Union of India v. K.K. Vadera, State of Uttaranchal v. Dinesh Kumar Sharma, K.V. Subba Rao v. Govt. of A.P., Sanjay K. Sinha-II v. State of Bihar, etc.*”

(ii) Even the persons, who were admittedly senior to the petitioner in the cadre have been granted promotion to Junior Selection Grade with effect from 01.12.1993, by virtue of a Notification issued much earlier on 30.04.1998. This fact has not been denied. In such circumstance, I do not find any reason to issue direction to the respondents to consider the petitioner’s case for promotion to Junior Selection Grade with effect from a date which is prior to date with effect from which, the persons senior to the petitioner in the same cadre, have been granted promotion to the Junior Selection Grade.

(iii) If the petitioner was so sanguine about his claim for consideration for promotion or promotion to Junior Selection Grade with effect from 01.03.1989, he could have approached this Court earlier. Relief claim at such belated stage in the present proceeding filed in the year 1999 can be rejected on this ground also, in addition to the grounds noted above. Reference can be made in this regard to a Supreme Court decision in case of ***“Bhakra Beas Management Board Versus Krishan Kumar Vij and Anr.”*** reported in ***“(2010) 8 SCC 701”*** in which, the Supreme Court has held in ***Paragraph – 37*** as follows:-

“37. Yet, another question that draws our attention is with regard to delay and laches. In fact, Respondent 1’s petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has



simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.”

It is, however, made clear, and as has been noted above, that I find no merit in petitioner’s claim.”

7. If these are the factual background and legal position, the conclusion arrived at by the learned Single Judge that the appellant had no case for grant of promotion to Senior Selection or Super Time Scale or for shifting of the date of grant of Junior Selection Grade cannot be said to be erroneous.

8. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
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