

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17111 of 2008

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Bachho Singh, son of late Gopal Singh, Resident of Village Kanauda, P.S. Imamganj, Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Agriculture Production Commissioner-cum-Secretary, Agriculture, Government of Bihar, Patna.
3. Director of Agriculture, Government of Bihar, Patna.
4. Director, Administration, Department of Agriculture, Government of Bihar, Patna.
5. The Deputy Director, Administration Department, Agriculture Government of Bihar, Patna.
6. The District Agriculture Officer, Gaya, District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prasoon Sinha, Adv.
Mr. Prabhat Kumar, Adv.

For the Respondent/s : Mr. Sudish Kumar, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-11-2017

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

In this case, the petitioner is claiming promotion to the rank of Block Agriculture Officer or the equivalent post as he has stated that he has passed the B.Sc. Agriculture Examination while in service.

The petitioner entered in service as Village Level Worker (V.L.W.) on 23.8.1961, superannuated from service on 31.5.1997. At the time of entry, the petitioner was Matriculate with science, also passed the Diploma Examination in Agriculture. The



Government had sponsored a scheme for giving higher education of agriculture degree to V.L.W. so that they may acquire qualification for the purpose of promotion to the higher post and the cost, incurred in prosecuting the study, was to be borne by the State. The petitioner had applied and was selected for admission in the B.Sc. (Agriculture) Course on 3.6.1980 and completed the Degree on 2.4.1985. The Government passed the resolution vide Memo No. 12537 dated 19.10.1985 and Memo No. 8651 dated 24.9.1991 reserving 25% vacant posts of Block Agriculture Officer to those V.L.Ws. who have acquired the B.Sc. Agriculture Degree. It has been submitted that no rule has been framed to decide the inter-se seniority of the Agriculture Graduate of V.L.Ws. for their promotion. The Government took a decision to promote those V.L.Ws. who had passed the examination in the 1982 batch and those who passed later, were deprived of the benefit and, accordingly, the seniority list was prepared vide Memo No. 6060 dated 5.8.1992 of those who had passed the examination of 1982 batch. The aforesaid seniority list was challenged by the petitioner in C.W.J.C. No. 10693 of 1992 before this Court, while the writ application was pending, the notification no. 6581 dated 10.8.1994 was issued, thereby promoted 52 V.L.Ws. without considering the claim of the petitioner. Then another notification was issued vide Memo No. 7634 dated 16.9.1994 whereby the respondent



no.3 promoted all 53 V.L.Ws. including one Sri Shyam Nandan Prasad whose name does not figure in the order dated 10.4.1994. The same was challenged by filing an amendment application. The writ application was dismissed again, he challenged in L.P.A. which too was dismissed. Against both the orders, the petitioner moved before the Hon'ble Apex Court in S.L.P. (C) No. 2298 of 1997 which was also dismissed with a liberty to the petitioner to file representation and the authority will take decision in accordance with law. The petitioner, in view of the decision of the Hon'ble Apex Court, filed representation, raised the grievance, ultimately the authority rejected the representation of the petitioner. Against that, the petitioner filed writ application C.W.J.C. No. 5752 of 1999 which was allowed and the decision that was taken by the State contained in the impugned Annexure-D was quashed and the matter was again remanded for fresh consideration and the authority vide Memo No. 519 dated 25.2.2006 rejected the case of the petitioner stipulated that on 6.4.2005 i.e. the day of deliberation of Departmental Promotion Committee, the petitioner had already superannuated from service, the question of granting promotion does not arise as he will not be able to join the promoted post. The question in the present case, is the view that has been taken by the State proper, in view of the fact in absence of rule about passing of examination would be basis of deciding the



seniority of an employee, always it is dependent on the date of entry in service, if the rule specifically provides that the person who passes the examination earlier will rank senior, only in that circumstances, he can steal march over his senior and claim seniority but, in absence of such, passing of the examination cannot be a basis for deciding the seniority of an employee, reliance can be placed to the judgment passed in the case of *Satpal Antil & Ors. Vs. Union of India & Anr.* reported in (1995) 4 SCC 419. In the aforesaid case, this was the prime question raised before the Apex Court and the Apex Court decided that mere passing of the examination earlier will not give a march to the junior to become senior and further this order cannot sustain, if the posts were available on the day when his junior i.e. the person who entered into service later, passed the examination earlier, in such circumstances, the claim cannot be rejected merely because on the day of deliberation of case of petitioner by Departmental Promotion Committee, he was superannuated. As the petitioner has already superannuated in the year 1997 much earlier, certainly if that would have been in the mind then the Court would not have remanded back the case of the petitioner for re-consideration but, this Court is of the view that if the post was available on the date of his entitlement, merely the case was considered later on by the Departmental Promotion Committee, will not be impediment for granting benefit of



promotion from the date his junior has been given.

In that view of the matter, the order dated 25.2.2006 is set aside and the matter is remanded back with a direction that if the posts were available on the day when the persons of 1982 batch were considered for Block Agriculture Officer of those person being junior, he will get the benefit on and from that date but, the financial benefit cannot be given, only the notional benefit for the purpose of granting the retirement benefit.

This writ application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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