IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.156 of 2016
arising out of
Civil Writ Jurisdiction Case No. 11056 of 2015

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1. Alakh Niranjan, aged about 47 years, S/o Sachchidanand Prasad, At Rasalpur, P.O.- Jagay, P.S.- Aungari, District- Nalanda (Biharsharif).
2. Pramod Kumar, aged about 43 years, S/o Shri Raghunandan Prasad, R/o At- Lodipur, P.O.- Khushalpur, P.S.- Telhara, District- Nalanda (Biharshariff).
3. Manoj Kumar Aged about 44 years, S/o Sitaram Prasad, At. + P.O.- Keshour, P.S.- Hilsa, District- Nalanda (Biharshariff).
4. Shishir Kumar Sinha aged about 46 years, S/o Shri Birendra Kumar Sinha, R/o At- Biharshariff, Mohalla- Bhalsashur, P.O+P.S.- Biharshariff, District- Nalanda (Biharshariff).
5. Satendra Kumar aged about 47 years, S/o- Late Ram Prasad Singh, At- Kajibigha, P.O.- Rasisa, P.S.- Islampur, District- Nalanda (Biharshariff).
6. Ajeet Kumar aged about 50 years, S/o Late Rameshwar Gramin, At + P.O- Salehpur, P.S.- Telhara, District- Nalanda (Biharshariff).
7. Kumari Rekha Sinha, aged about 40 tears, W/o- Sanjay Kumar Singh, At+P.O.- Nischalganj, P.S.- Ekangarsarai, District- Nalanda (Biharshariff).
8. Md. Anwar Hussain aged about 43 years, S/o- Md. Nabi Saffi, At- Nirpur, P.O.- Sagarpur, P.S.- Makhdumpur, District- Jehanabad.
9. Satyadeo Prasad, Aged about 52 years, S/o- Late Ganesh Prasad, At- Nundipur, P.O.- Ranipur, P.S.- Aungari, District- Nalanda (Biharshariff).
10. Md. Junaid Alam aged about 39 years S/o- Late Hamid Ansari, Mohalla- Malahbigha, P.O.+P.S- Islampur, District- Nalanda (Biharshariff).

.... Petitioners/Appellants

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna.
5. The District Education Officer, Nalanda (Biharshariff).
6. The District Programme Officer (Establishment), Nalanda, (Biharshariff).
7. The Member of District Teachers Promotion Committee (Senior Deputy Collector, Nalanda (Biharshariff).

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.... Respondents/Respondents

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Appearance :
For the Appellants : Mr. Rama Kant Singh, Adv.
For the State : Mr. Sanjay Kumar Ojha-A.C. to GP-7

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 09-01-2017

The present Letters Patent Appeal is directed against an order passed by learned Single Bench on 30.11.2015 whereby the claim of the appellants for grant of graduate trained scale was declined and their claim for promotion in the graduate trained scale from the date the vacancies became available also remained unsuccessful.

The appellants were appointed in the year 1999 as Assistant Teachers but were granted Matric trained scale. The issue as to whether the appellants are entitled to promotion in graduate trained scale and further promotion on the post of Headmaster, Middle School was considered by a Full Bench of this Court in a judgment delivered on 21st of April 2009 in C.W.J.C. No. 12708 of 1996 and analogous cases. In pursuance to the said order, the trained teachers' scale was granted to 325 teachers but not to the appellants, although, it was alleged that 105 vacant posts are still available and thus the appellants are entitled to such scale.

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In the counter affidavit, it was asserted that the claim of the appellants for promotion in graduate trained scale has been rejected by the District Education Officer on 23rd of March, 2015. It was pointed out that in respect of science graduate teachers, the persons up to serial no. 315 of the gradation list in the general category were given promotion but since the appellants are rank lower in the gradation list, they could not be considered for promotion. The assertion of the appellants that the persons junior to them in the gradation list have been given promotion was denied. In respect of promotion to Krishna Kumar and Dharmdeo Choudhary, it was pointed out that they belong to the Scheduled Caste category, therefore, the appellants cannot claim any parity with respect to grant of promotion to the reserved categories.

Learned Single Bench dismissed the writ application on the ground that the appellants' rank starts from serial no. 341 onwards whereas the last person who has been granted promotion finds figure at serial no. 315. The claim of the appellants for promotion on the basis of promotion granted to Scheduled Caste and Scheduled Tribe candidates cannot be accepted as the appellants cannot claim parity with reserved category candidates. It was also found that if there are vacancies available, the next round of exercise will be done and all those persons, who have not been considered, will surely get the

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benefit of promotion.

In the present appeal against the said order, the learned counsel for the appellants refers to an order passed in C.W.J.C. No. 12716 of 2015 decided on 13th of October, 2015 wherein the learned Single Bench has noticed the quashing of resolution no. 11635 dated 21.08.2012 with regard to grant of benefit of reservation and promotion for SC and ST candidates. It has been noticed that the letter of the General Administration Department dated 12th of August, 2014 cannot come in the way of consideration if any right accrued in favour of any employee for grant of promotion.

We do not find that the said order provided any assistance to the arguments raised by learned counsel for the appellants. The appellants are general category candidates and the last candidate who has been granted promotion rank at serial no. 315 whereas the appellants rank from serial no. 341 or below. They will get promotion or trained teachers' scale as per their seniority and not on the basis of pay-scale granted to reserved category candidates. The appellants cannot claim any parity with the candidates who have been appointed against the reserved post.

The appellants have no right to claim promotion. Once none of the juniors in the class to which the appellants belong have been granted promotion, the appellants cannot claim promotion. The

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promotion is not a right but only confers right of consideration, as and when the State Government decides to fill up their vacancies. Since none of the juniors have been promoted, therefore, the mere fact that there are vacancies will not confer any enforceable right in favour of the appellants to claim promotion.

In view of the above, we do not find any error in the order passed by learned Single Bench warranting no interference.

Accordingly, the present L.P.A. is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12/01/2017
Transmission Date	N/A

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