

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.2242 of 1999**

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1. Smt. Shanti Devi, wife of Late Sachchidanand Prasad Varma (the original petitioner).
  2. Umakant Prasad Verma
  3. Ramakant Prasad Verma
  4. Shashikant Prasad Verma
  5. Ravi Kant Prasad Verma
  6. Nishikant Prasad Verma.

All are sons of late Sachchidanand Prasad Verma (the original petitioner) and are residents of Mohalla- Gharagali, Nehru Tola, P.S.- Chowk, Patna City, Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Planning Commissioner, Planning Department, Bihar, Patna, at Old Secretariat, Patna, Post- Secretariat, Patna-800001.
3. Planning Secretary, Planning Department, Bihar, Patna, at Old Secretariat, Patna, Post- Secretariat, Patna-800001.
4. Director, Directorate of Statistic & Evaluation, Bihar, Patna. At Old Secretariat, Patna, Post- Secretariat, Patna-800001.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Ms. Shyama Sinha, Adv.

For the Respondent/s : Mr. Zaki Haider, AC to SC-9

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 28-06-2018**

Heard Ms. Shyama Sinha, learned counsel appearing for the petitioners and Mr. Zaki Haider, learned Assisting Counsel to Standing Counsel No.9 for the State.

It is almost four years after the superannuation of the original petitioner Sachchidanand Prasad Verma (since deceased) on 31.5.1995 that the present writ petition is filed seeking relief for continuity of service for the period from 10.1.1964 to 24.2.1968 as well as for consequential benefits arising thereof in the form of second time bound promotion to the post of Assistant Statistical



Officer (Junior Selection Grade) etc.

The writ petition was admitted for hearing on 8.1.2004.

The pleadings on record would show that the deceased petitioner was initially appointed as a Junior Statistical Supervisor on 2.4.1962. The service of the petitioner was temporary and was liable for termination without notice. In February, 1963 a notice was issued to him seeking explanation on his absence from work on 16.2.1963. The reply did not satisfy the respondents resulting in a relieving order dated 10.1.1964, at Annexure 6. Feeling aggrieved the deceased petitioner filed representations and was given opportunity of hearing, the end result of which was that vide letter dated 17.7.1967 at Annexure 9, the petitioner was informed by the Director, Statistical and Evaluation that in case he would accept his default and assures that it would not be repeated, his representation would be considered. Accordingly the deceased petitioner while tendering apology vide Annexure 10, gave an undertaking that he would not repeat his past. All these consumed a period of four years when vide order bearing Memo No.1095 dated 19.2.1968, the original petitioner was given re-employment after condoning his age. The deceased petitioner superannuated with effect from 31.5.1995 and in between has also secured his first time bound promotion but was denied second time bound promotion as he was not given the benefit of past service nor continuity for the period



10.1.1964 until 19.2.1968 when he was reemployed. It is after filing representation that he has approached this Court through the writ petition in question after four years of his superannuation in 1999.

It is on the very first date when this writ petition was posted for consideration i.e. 8.1.2004 that it was admitted for hearing and has been taken up for final disposal thereafter when in between the writ petitioner has deceased and vide order passed on 18.8.2011 a substitution prayed, has been allowed. It is the legal heirs who are now pursuing this matter.

I have heard learned counsel for the parties and I have perused the records.

While it is not in dispute that the post-retiral benefits to which the deceased petitioner was entitled has been given to him, it is also not denied that the deceased petitioner did get the first time bound promotion. Whether it is the issue of regular promotion and/or the second time bound promotion which, according to the deceased petitioner, has been denied to him, he is raising the claim on the foundation that he is entitled to continuity for the period, he was out of service i.e. 10.1.1964 to 19.2.1968 and if allowed, he becomes entitled to the benefits.

In so far as the issue of continuity is concerned, it is noted that the initial appointment of the deceased petitioner was temporary as manifest from the appointment letter dated 2.4.1962 at



Annexure 1 and before the deceased petitioner could be confirmed on the post, he was relieved after show cause vide order passed on 10.1.1964 at Annexure 10 which was never questioned by the deceased petitioner before any forum. An equitable exercise taken by the respondents to re-employ him on the condition noted above that vide order bearing Memo No.1095 dated 19.2.1968 present at Annexure 11, he was re-employed. In my opinion, in absence of any challenge to the earlier relieving/removal by the petitioner, no right accrues to him to seek continuity for the period of removal. Undisputedly the petitioner was re-employed and not reinstated. Law is very clear on the issue and it is only in case of a reinstatement that any such grievance can be raised but not in a case of re-employment which is in the nature of a fresh appointment.

This would bring this Court to the other issue regarding grant of second time bound promotion and/or the regular promotion to the grade of Statistical Supervisor (Junior Selection Grade). In my opinion, apart from the fact that a delayed attempt has been made by the deceased petitioner to raise the issue of an in service benefit after a lapse of four years of his superannuation, the explanation given by the respondents in their counter affidavit more particularly paragraph 8 is an explanation for the denial and does not persuade this Court to give any indulgence for it is informed that it is the unsatisfactory service record of the deceased petitioner



which also carries instances of unauthorized absence, which disentitled the petitioner to such relief. The absence though is being explained by Ms. Sinha, learned counsel for the petitioner, as leave granted, nonetheless, in absence of challenge within reasonable time would not entitle him to raise the same after such long lapse of time. A writ is an efficacious remedy and a period of four years after superannuation is too excessive for condonation thereof more particularly where the relief prayed relates to in service benefits.

Even otherwise unless service tenure of an incumbent is found to be satisfactory, he cannot claim the benefit of promotion, whether time bound promotion or a regular promotion. The reasons thus assigned by the respondents in the counter affidavit, are sufficient to reject the claim.

For the reasons discussed above, I am not persuaded to grant indulgence to the relief prayed.

The writ petition is dismissed. The parties would bear their own costs.

**(Jyoti Saran, J)**

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