

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1700 of 2013

In

Civil Writ Jurisdiction Case No.10922 of 2007

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1. The State Of Bihar Through The Commissioner- Cum- Secretary, Animal Husbandry Department, Government Of Bihar, New Secretariat, Vikash Bhawan, Patna.
 2. The Under Secretary, Animal Husbandry Department, Government Of Bihar, New Secretariat, Vikash Bhawan, Patna.
 3. The Director, Animal Husbandry Department, Government Of Bihar, New Secretariat, Vikash Bhawan, Patna

... .. Appellant/s

Versus

1. Dr. Mohmudul Hasan S/O Late Md. Siddique, Retired Assistant Project Officer (Animal Husbandry) Department, D.R.D.A., Giridih, Presently Residing In Village- Khirkia, P.S- Derni, Saran.
2. The State Of Jharkhand Through The Secretary, Rural Development Department, Government Jharkhand, Ranchi.
3. The District Rural Development, Giridih Through Its Vice- Chairman, Deputy Development Commissioner, Giridih
4. The Accountant General (A & E)- II, Birchand Patel Marg, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vishwambhar Prasad, AC to AAG 5
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 22-03-2018

Heard counsel for the State, the appellant. There is none on behalf of the private respondent despite valid service of notice.

2. The intra- court appeal has been preferred by the State against the order dated 24.07.2012 since the writ application of the



private respondent was allowed and the relief, which has been granted, is being assailed. The learned Single Judge while considering the issue whether up-gradation of pay by virtue of 10 years of service put by a diploma holder amounts to promotion or not, had this to say :

“If we read the notification of the resolution dated 16.7.1985 (Annexure-5) in the first paragraph it points out the difficulty that sub clause 7 of Clause 11 of the Government resolution dated 30.12.1981 was causing. It points out that as per resolution dated 30.12.1981 vide clause II (vii) persons who got promotion or whose pay scale were upgraded as a consequence of unification of posts or merger of posts and, as such, receiving upgraded pay scales were disentitled as these were treated as promotion. The Government thus decided in 1985 (Annexure-5) that where promotion or upgradation of pay scale was made as a consequence of unification or merger or of upgradation of pay scale prior to 1.8.1981, that would not be considered as an effective promotion to deny benefits of time bound promotion scheme. To my understanding, what this notification (Annexure-5) means is where by an act of the Government for merging posts, unifying or upgrading posts, financial benefits accrued, they are not to be taken as promotion provided they are prior to 1.4.1981. But that does not mean, as in the case of the petitioner, where because of his length of service and a major achievement of obtaining a degree of Veterinary Science he became entitled to upgraded pay scale that would not be a promotion. That would surely be a promotion even though prior to 1.4.1981. That could deny



him the benefits of the time bound promotion at the first stage. The distinction between the two is that in one by virtue of petitioner's own efforts he manages to get an upgraded pay scale, that is a promotion. That is contrary to stagnation whereaas when by action of the state there is merger, unification or upgradation that should not disentitle the person because he continues on the post but State action in merging/unifying/upgradation confers some financial benefits. It must be kept in mind that time bound promotion is basically an anti stagnation scheme.

Now I may consider the judgment of the Division Bench (supra). The fact of that case was that as a consequence of upgradation/merger of the concerned pay scale in the year 1967, the person got a promotion. Learned single Judge and the Division Bench(supra) referring to the notification No.4245 dated 16.7.1985(Annexure-5) held that this promotion being as a consequence of upgradation/merger of post by State and prior to 1.4.1981 should not be taken as a promotion for the purpose of the time bound promotion scheme. It did not state that any promotion granted prior to 1.4.1981 would not be taken into account, for a simple reason. This would be upgradation on the recommendation as accepted by State Government in its notification dated 30.12.1981. As noted above, the time bound promotion scheme is based on the principle of anti stagnation measure and ignoring a promotion prior to 30.12.1981 and then granting promotion subsequently would be in conflict with the scheme itself.

Thus, contention of Mr. Shivendra Kishore that petitioner's promotion in the year 1971 on account of acquiring degree and 10 years of service being prior to



1.4.1981 must be ignored and cannot be accepted. That was not as a consequence of merger, unification or upgradation and simply stated it was earned and obtained by the petitioner by his own efforts. That being the first promotion, the petitioner would thus be entitled to the second time bound promotion after 25 years from the date of his original appointment and or 15 years from the date of his first promotion in the year 1971. If these principles are kept in mind, the second promotion would be 15 years from the first promotion and that would take it to the year 1986. Therefore, the petitioner would be entitled to his second time bound promotion in the year 1986 and not in the year 1995 as granted by the State.”

3. Submission of the counsel for the appellants is that in terms of the Resolution dated 21.01.1959, it is a case of appointment and, therefore, it cannot be a case of up- gradation and once a person has got the benefit of appointment of a higher post, then the anti-stagnation measure will flow therefrom.

4. There seems to be serious error in such a submission for the reason that the 1959 Resolution talks in terms of up- gradation for a set of people and especially for diploma holders, who have put in 10 years of service on the same post and capacity. It is not a case of substantive appointment of such persons, therefore, it cannot be allowed and accepted that the private respondent was given benefit of substantive appointment on a higher post and, therefore, he cannot be given the benefit of stagnation. The



learned Single Judge is correct in his view in allowing the writ application for the reasons reproduced in earlier part of the order. We do not find any infirmity either in rational or logic in interpreting the 1959 Resolution for extending the benefit. The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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