

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17176 of 2010

=====

SUDHANSHU SHEKHAR SINGH S/O SHRI RAMDEO SINGH R/O
VILL.- AKASI TOLA, P.S.- BARIARPUR, DISTT.- MUNGER, AT
PRESENT WORKING AS ASSISTANT TEACHER, RAM MANOHAR
LOHIA HIGH SCHOOL, BARIARPUR, MUNGER

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY HUMAN RESOURCES AND
DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA
3. THE DIRECTOR, SECONDARY EDUCATION, BUDH MARG, PATNA
4. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, BIHAR,
PATNA
5. THE DISTRICT EDUCATION OFFICER, MUNGER
6. THE DRAWING-CUM-DISBURSING OFFICER MEKSASPUR HIGH
SCHOOL, MUNGER

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr. Tripurai Nath AC to SC-26

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 18-06-2018 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

The issue warranting adjudication in this writ
application is whether the respondents can take advantage of
their own wrong and denying the benefit of ACP from the due
date.

Mr. Tej Bahadur Singh, learned senior counsel
appearing on behalf of the petitioner submits that the



respondents have acknowledged that they have committed mistake in the matter of considering the case of the petitioner. In fact, juniors to the petitioner have been granted benefit of ACP with effect from 02.12.2004 whereas petitioner was granted with effect from 26.03.2010 ignoring the basic principle that senior should be granted benefit at least from the date juniors have been granted such benefit. He submits that notwithstanding seniority of the petitioner, the respondents have granted the benefit of ACP to the juniors with effect from 02.12.2004.

Mr. Singh referring to the judgment of the Division Bench of this Court in the case of Sudhansu Shekhar Singh & Ors. Vs. The State of Bihar & Ors., CWJC No. 1776 of 1993 submits that the Division Bench Judgment is settler on the point that the respondents have committed mistake in the matter of consideration and granting the benefit. He also referred to paragraph No. 8 of the Division Bench Judgment in C.W.J.C. No. 1776 of 1993 with C.W.J.C No. 2472 of 1993 dated 21.1.1997 reads as follows:-

“8 In view of subsequent development, particularly in view of direction given by this Court in C.W.J.C. No. 2709/93, according to us, without disturbing the contesting respondent Nos. 5 to 8, the writ petitions of the petitioners are



fit to be allowed. Taking into note that 444 posts were lying vacant and only 390 names were recommended, including the name of the petitioners and further taking into note that the persons whose position are below the name of the petitioners in the merit list have already been provided with appointment even as general category persons, the respondents are directed to provide the petitioners with orders of appointment to the post of Assistant Teachers, Geography in any secondary school of the State. All the aforesaid formalities are to be completed by the respondents by 28th February, 1997. The petitioners will get their salary etc. from their actual date of their joining but, their seniority etc. will be determined on the basis of their position in the merit list.

Learned counsel appearing on behalf of the State submit that since petitioner was appointed with effect from 26.3.1998 and as such on completion of 12 years he was granted the benefit with effect from 26.03.2010.

Mr. Singh in reply of the submission submits that para 8 of the Division Bench judgment is settler point of seniority of this petitioner in terms of merit position and as such petitioner cannot be denied the benefit of the ACP counting the service of the petitioner from 1998 once the Division Bench has protected the seniority on the basis of merit list.



Considering the totality of the fact situation and the admitted factual position that the petitioner is senior to those who have been granted the benefit of ACP from 2004, respondents cannot take advantage of their own wrong in denying the benefit of ACP treating the appointment of the petitioner from 1998. The law in this regard is well settled. Referring to the judgment of the Division Bench of Bombay High Court in case All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom. 232 where the Chief Justice Mr. Chagla observed that one cannot take advantage of its own wrong.

Applying the same principle, the Court is of the view that the petitioner cannot be denied the benefit of ACP particularly when paragraph No. 8 of Division Bench protect the interest of the petitioner notwithstanding actual date of joining but on the basis of seniority in the merit list.

In view of the above, the respondents are hereby directed to workout the benefit of the petitioner from the date juniors have been granted such benefit of ACP within the period of four months from the receipt/production of a copy of this order.



With the aforesaid, the writ application stands
disposed of.

(Anil Kumar Upadhyay, J)

banti/rahul

U			
---	--	--	--

