IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20797 of 2014

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Sudha Kumari wife of late Sagar Mahto resident of Village - Chowki, Police Station Chowki , District- Begusarai, at present resident of Village -Kiranpur, Police Station Medini Chowki, District- Lakhisarai.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Director (Primary Education), Government of Bihar at & PO Patna.
3. The District Programme Officer (Establishment), Lakhisarai at & PO Lakhisarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uma Kant Shukla, Advocate,
For the Respondent/s	:	Mr. Dinesh Maharaj, AC to AAG-11.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

2 01-10-2018 1. Heard learned counsel for the petitioner and counsel appearing on behalf of the State.

2. Petitioner is aggrieved by the order contained in Annexure-7 dated 29.3.2014 whereby the claim of the petitioner was rejected on the ground that the petitioner has superannuated and in terms of Clause 8 and clause -9 of 2011 rules, financial benefit of promotion cannot be granted after superannuation. Respondents have framed promotion rules 1993 and in the said promotion rules there is a specific provision for up-gradation of teachers from basic grade upward on completion of Kalabadhi in terms of the promotion rules. The respondents were obliged to grant such promotion in term of statutory promotion rules on completion of Kalabadhi. Since the respondents have failed to

grant promotion and consequential benefits in terms of promotion rules 1993 they cannot deny the same to the petitioner taking advantage of their own lapse.

3. The petitioner has approached this Court by way of CWJC No. 13608 of 2007. The said application was disposed of vide order dated 23.11.2011 and direction was issued to the respondents to complete the exercise with regard to promotion and consequential benefits within a period of six months, the respondents failed to carry the direction of the Writ Court and thereafter the petitioner filed MJC No.1767 of 2013. In view of the order issued by the District Programme Officer (Establishment), Lakhisarai on 29.3.2014 and liberty was granted to the petitioner to challenge the same after the order dated 29.3.2014 the present writ application has been filed. In the Counter affidavit it was reiterated that terms of clause 8 and 9 of 2011 rules the petitioner is not entitled to grant of monetary benefits as petitioner has superannuated on 31.12.2001. From the material available on the records, it appears that the respondents have taken advantage of their own lapses. It was obligation of the respondent under 1993 Promotion rules to consider and grant promotion to teachers with all consequential benefits on completion of Kalabadhi but respondents failed to

perform their obligation and grant promotion in terms of the 1993 promotion rules on competition of the Kalabadhi from basic grades upwards and now they are taking plea that since they have failed to perform their duty and therefore, the right of petitioner for grant of promotion in terms of 1993 rules have frustrated. It is now well settled that one cannot take advantage on its own wrong referring to 2011 rules 2011 rules came into existence from the date of notification and it has no application at the time when the petitioner was entitled to grant of promotion under 1993 rules. The Court cannot appreciate the stand of the respondent saying that since they have not taken decision in terms of statutory rules in granting promotion to the petitioner therefore, the right of the petitioner for grant of promotion and consequential benefits has evaporated in this air. The law in this regard has been lucidly explained by the Chief Justice Chagla of the Bombay High Court in the case of *All India Groundnut Syndicate Ltd, vs. Commer. of Income Tax, Bombay City. reported in AIR 1954 (232)* it was held that it is the basic principles of law that one cannot take advantage of own wrong. Relevant portion of the judgment is quoted below:-

> "But the most surprising contention is put forward by the Department

that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person–we take it that the Income-tax Department is included in that definition–can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because " I have committed a default and the right is lost because of that default."

4. Considering the present case in view of the discussion above the Court is of the considered view, the respondents cannot take advantage of their own lapses in deciding the claim of the petitioner and if they failed to discharge their duty the right of petitioner cannot stand forfeited. In view of the discussion above the writ petition is allowed and annexure-7 is quashed. Respondents are hereby directed to take appropriate

step for promotion of the petitioner strictly in terms of promotion rules 1993 on competition of Kalabadhi within a maximum period of four months from the date of receipt/ production of a copy of this order and grant promotion with all consequential benefits to the petitioner.

5. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

banti/-T.Kr.

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