

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15692 of 2012

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1. Muni Ram S/O Late Akalu Ram Resident Of Village- Orisa, P.O. + P.S.- Hasua, District- Nawada
 2. Kamta Prasad Singh S/O Late Prakash Singh Resident Of Village- Badhauna, P.O.- Badhauna, P.S.- Hasua, District- Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Education Department, Govt. Of Bihar, Patna
2. The Principal Secretary, Education Department, Govt. Of Bihar, Vikas Bhawan, Patna
3. The Secretary Primary Education, Vikas Bhawan, Patna
4. The Director, Primary Education, Vikas Bhawan, Patna
5. The D.S.E./ D.E.O., Nawada
6. The Accountant General, Bihar, Virchand Patel Path, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bankey Bihari Singh, Advocate
For the Respondent/s : Mr. Manoj Kumar Sinha, AC to GA 9

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 07-09-2018

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

The grievance of the petitioners is non-consideration of their case for grant of promotion in accordance with the 1993 Promotion Rules. The 1993 Promotion Rules prescribes eligibility and grant of promotion from basic grade upward on completion of *kalabadi*. The respondents are required to follow the rules for grant of promotion to all eligible candidates and in case the claim of the petitioners are found to be genuine and covered by the Promotion Rules, the respondents are obliged to complete the



process and grant promotion to all eligible candidates including the petitioners. The respondents are strictly bound to adhere to the criteria prescribed in the 1993 Promotion Rules, particularly in view of the judgment of the Full Bench of this Court in the case of ***Ram Nath Prasad vs State of Bihar & Ors. [2009(3) PLJR 384]***, whereby the Full Bench on consideration of various aspects of the matter held out that the respondents shall prepare the gradation list of the eligible candidates and give them promotion in accordance with the 1993 Rules.

Learned counsel for the respondents has raised objection as to the maintainability of the claim of the petitioners on the ground that petitioner no.1 has already retired from service on 31.07.1999 whereas petitioner no. 2 has retired on 31.05.2001. According to the respondent-authorities, the writ petition itself is misconceived.

In view of the fact that mode of consideration and grant of such benefits is statutory in nature accrued to the petitioners in terms of the rules and that cannot be defeated in saying that the petitioners have superannuated thereby depriving them of their entitlement to the promotion and consequential benefits after retirement. The submission of the respondents is unsustainable in view of the fact that under the statutory rules it



was the obligation of the concerned authorities to verify and see that all the eligible employees are given such promotion on fulfilling the criteria prescribed under the rules and failure on their part cannot be a ground to defeat the claim of the petitioners. Reference in this regard may be drawn from the judgment of Hon'ble Mr. Justice Chagla, Hon'ble the Chief Justice of Bombay High Court, in the case of *All India Groundnut Syndicate vs. Commissioner of Income Tax [AIR 1954 Bombay 232]*, whereby in similar circumstances it has been held that the Court does not appreciate the objection of the State where it fails in discharge of duties and therefore the right of the petitioner stands frustrated. Relevant part 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 cannot claim the right is deprived of that right because “I have committed a default and the right is lost because of that default.”



In view of the discussions above, if the petitioners are eligible for promotion on completion of *kalabadhi* in terms of the 1993 Promotion Rules, the respondents have to take a final decision if not already taken till date within a maximum period of four months from the date of receipt/production of a copy of this order and grant consequential benefits to the petitioners within the time frame indicated hereinabove.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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