IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15852 of 2011

Smt. Ramwati Devi W/o Late Ambika Prasad Singh, resident of Village Kalaund, P.O. Teyar, PS Akabarpur, District Nawada

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Primary Education, H R D Department, Govt. of Bihar, Patna
2. The Principal Secretary, H R D Department, Govt. of Bihar, Vikas Bhawan, Patna
3. The Commissioner, Finance Department, Govt. of Bihar, Patna
4. The Secretary, Primary Education, H R D Department, Vikas Bhawan, Patna
5. The Director, Primary Education, HRD Department, Vikas Bhawan, Patna
6. The Regional Deputy Director of Education, Magadh Division, Gaya
7. The D S E/ D E O, Nawada
8. The Accountant General, Bihar, Virchand Patel Path, Patna

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bankey Bihari Singh, Advocate
For the State	:	Mr. Pawan Kumar, SC to GA 1
For the Accountant General	:	Mr. Chaitanya Swaroop, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date : 07-09-2018

The original petitioner in this writ petition, namely, Ambika Prasad Singh, has died during the pendency of the present proceeding on 04.10.2014 leaving behind his legally wedded wife Smt. Ramwati Devi. As prayed for in I.A. No. 570 of 2015, the name of the original petitioner is expunged and in his place the name of his legally wedded wife as mentioned in paragraph-1 of the petition is substituted. Since the issue involves monetary claim, therefore, right to sue survives to the legal heir/representative of the original petitioner Ambika Prasad Singh who is entitled to the consequential benefits.

IA No. 570 of 2015 is allowed.

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

The grievance of the original petitioner is non-consideration of his 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 upwards on completion of *kalabadhi.* The respondents are required to follow the rules for grant of promotion to all eligible candidates and in case the claim of the original petitioner is found to be genuine by the respondents, they are obliged to complete the process and grant promotion to the original petitioner as well as all eligible candidates. 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 an objection as to the maintainability of the claim of the petitioner on the ground that petitioner no.1 has already retired from service on 31.03.2002. 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 and right accrued to the original petitioner in terms of the rules and that cannot be defeated by saying that the original petitioner has superannuated and as such he is deprived of his 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 in the rules and failure on their part cannot be a ground to defeat the claim of the original petitioner. 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 original petitioner was eligible for promotion on completion of *kalabadhi* in terms of the 1993 Promotion Rules, the respondents are directed 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 all consequential benefits to the substituted heir of the original petitioner within the time frame indicated hereinabove.

So far as the action of the respondents in directing recovery of the amount already paid to the petitioner is concerned, in view of the judgment of the Apex Court in the case of ***State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334],*** the same is unsustainable and the respondents are directed to refund the amount recovered to the substituted heir of the original petitioner within a period of four months from today.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11/09/2018
Transmission Date	N.A.