

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24893 of 2013

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Basudeo Yadav, S/O Ram Khelawan Yadav, Resident of Village- Tarila, P.O-
Telkatnu, District- Siwan, present posted at Govt. Middle School Sahuli, Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through Director, Primary Education, Bihar, Patna.
 2. District Magistrate-Cum- Chairman, Establishment Committee, Siwan
 3. District Education Officer, Siwan Member Establishment, Committee, Siwan.
 4. District Superintendent of Education- Cum- District Programme Officer, Siwan.
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. T. N. Maitin, Sr. Advocate
Mr. Vijay Kumar Mishra, Advocate
For the Respondent/s : Mr. Md. Harun Quareshi, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 17-09-2018

Heard learned counsel for the petitioner and State.

2. Earlier, the petitioner has filed C.W.J.C. No. 234 of 1997 along with Ram Ratan Singh and others, which was disposed of vide order dated 06.03.2000. The Court after noticing the foundational fact noted that post of I.Sc. trained was available up to 01.04.1985 and respondents have granted promotion to respondent nos. 5 to 27 on 24.08.1995 without considering the case of the petitioner, the Court directed the respondent to revert one or other junior to make room for consideration and grant of promotion to the petitioners, if the petitioners are senior to the persons, who were granted such promotion.

3. It appears that the District superintendent of Education, Siwan has passed order on 31.07.2009 granting promotion to the petitioner noticing the fact that juniors to the petitioner has



already been granted such promotion. The petitioner was granted promotion vide Annexure-11, but subsequently promotion order was revoked vide Memo No. 1648 dated 25.08.2009 (Annexure-12) on the ground that no post is available for consideration of the case of the petitioner. After the order as contained in Annexure-12, other writ application filed by the petitioner bearing C.W.J.C. No. 15281 of 2001, which was pending consideration before this Court, was disposed of vide order dated 18.03.2010 (Annexure-13) and the Court directed the District Education Establishment Committee, Siwan to consider the case of the petitioner by placing the case of the petitioner in the meeting of the District Education Establishment Committee. After the order of the Writ Court dated 18.03.2010, the matter was examined by the District Education Establishment Committee and finally the respondents have passed order rejecting the claim of the petitioner vide order dated 06.10.2012 (Annexure-17).

4. Aggrieved by the decision of the District Education Establishment Committee, the petitioner has filed the present writ application.

5. On behalf of the respondents, counter affidavit has been filed wherein stand has been taken that the promotion in I.Sc. trained scale was available only up to 1985 and thereafter 1993 Promotion Rule came into existence, which was subsequently substituted by 2011 Promotion Rules. The respondents have not



disputed the fact that the juniors to the petitioners have been granted the benefit of I.Sc. trained scale. They have disputed the claim of the petitioner on the ground (a) there is no post available to accommodate the petitioner in I.Sc. trained scale and (b) the petitioner has approached the Committee belatedly.

6. Considering the reason assigned by the respondents in Annexure-17, at the touch stone of the observations and direction issued by this Court in C.W.J.C. No. 234 of 1997, the Court cannot approve Annexure-17, as the respondents were obliged to push down the persons junior to the petitioner to accommodate the petitioner and grant benefit of I.Sc. trained scale.

7. It appears from Annexure-11 that the petitioner was granted the benefit of promotion vide Memo No. 1442 dated 31.07.2009. Reading Annexures-10 and 11 and the reason assigned while rejecting the claim of the petitioner vide Annexure-17 no prudent man can approve the action of the respondents in denying the benefit of I.Sc. trained scale to the petitioner for obvious reason that there is no denial of the fact that the juniors have been granted such benefit. Once the order of the writ Court in C.W.J.C. No. 234 of 1997 has attained the finality, the respondents were required to push down the juniors to accommodate the petitioner in I.Sc. trained scale.

8. In addition thereto, the Court does not find any justification for rejecting the claim of the petitioner saying that the



petitioner has approached belatedly. The order dated 06.03.2000 passed in C.W.J.C. No. 234 of 1997 precludes the respondents to enter into controversy of delay in approaching the respondents for grant of benefit considering the seniority of the petitioner.

9. In view of the order passed in C.W.J.C. No. 234 of 1997, it does not lie in the mouth of the respondents to reject the claim of the petitioner on the ground of delay in approaching the respondents.

10. Under the aforesaid circumstances, the Court does not find any reason assigned for rejecting the claim of the petitioner is sustainable. Accordingly, the order for rejecting the I.Sc. trained scale contained in Annexure-17 is quashed. The respondents are directed to work out the benefit available to the petitioner by granting I.Sc. trained scale from the date the juniors to the petitioner have been granted. Benefit of grant of promotion with all consequential benefit must reach the petitioner within a period of four months from the date of receipt/production of a copy of this order.

11. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2018
Transmission Date	

