

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5021 of 2017**

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Dhaneshwar Prasad, S/o Late Ram Briksha Prasad, Resident of village + P.O. Jalpura, P.S. Haspura, Distt. - Aurangabad ( Bihar )

.... .... Petitioner/s

Versus

1. The State of Bihar through its the Principal Secretary, Elementary Education Department Government of Bihar
2. The Commissioner - Cum - Secretary, Elementary and Mass Education, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The District Education Officer, Aurangabad
5. The District Programme officer ( Estate ), Aurangabad

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ram Chandra Prasad Bharti, Advocate

For the Respondent/s : Mr. Prabhakar Jha-GP27

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

**ORAL JUDGMENT**

**Date: 10-05-2018**

Heard learned counsel for the petitioner and State.

2. Counsel for the petitioner has drawn attention of this Court to Annexure-1 whereby the writ petition filed by the petitioner was dismissed on the basis of statement made before the Court that the whole gradation list was cancelled, as it was erroneous and they are preparing fresh gradation list and they will consider the case of the petitioner for grant of promotion on preparation of gradation list, unfortunately the respondents have not cancelled the promotion granted to the persons on the basis of gradation list, which according to the respondents was not in accordance with law and they have cancelled such gradation list.



3. The respondents thereafter started preparing gradation list, but in the meanwhile the gradation list was stayed by this Court in L.P.A. No.1137 of 1996 and L.P.A. No. 1138 of 1996, which was referred to Full Bench, and finally the issue was decided by the Full Bench, which was reported in 2009 (3) BBCJ 342.

4. Learned counsel for the petitioner submits that the petitioner cannot be made to suffer on account of wrong preparation of the gradation list, particularly, on account of the fact that the case of others were considered, but the case of petitioner has not been considered.

5. The Court does not appreciate the stand of the respondents for the simple reason that petitioner cannot be made to suffer on account of Pendency of the litigation whereby the gradation list was stayed. It is well settled maxim that act of the Court prejudices none, (*actus curiea namonem gravabit*) and stay of gradation list cannot disentitled the petitioner for consideration of his case when the gradation list was finally prepared pursuant to the decision of the Full Bench simply because the petitioner superannuated.

6. At least, the petitioner was entitled to grant of promotion in the category of graduate trained scale from the date, the juniors to the petitioner were granted such promotion before



superannuation of the petitioner.

7. From Annexure-3, it appears that that the case of the petitioner was rejected on 5.9.2014 showing that the petitioner has superannuated and as such he cannot be granted promotion on the post of Headmaster. Even assuming that the petitioner superannuated before consideration of his case but court cannot ignore the fact that this is third attempt and twice the case of the petitioner was frustrated on account of the stand taken by the respondents. First writ petition being C.W.J.C. No. 2162 of 1996 was dismissed on the stand taken by the respondent that gradation list has been cancelled in the second round litigation when the petitioner approached this court in C.W.J.C. No. 12748 of 2000 which remains pending for 8 years when the writ petition was disposed of with direction to the respondents to consider the case of the petitioner for grant of B.A. trained scale but unfortunately the respondents took long years in deciding the claim of the petitioner in the light of Annexure-2 and now they have taken stand that the petitioner has superannuated.

8. The law in this regard is well settled that petitioner cannot be made to suffer on account of dilly-dally and lapse of the respondents. The petitioner has filed first writ petition in 1996 and second writ petition was filed in 2000 and the petitioner has to approach the court for initiating contempt proceeding, which was



disposed of on 16.3.2017.

9. Under the aforesaid, the petitioner has filed the present writ application. When the petitioner has cited example of others that respondents have taken plea that no juniors to the petitioner has been given promotion. They have taken stand that now retrospective promotion cannot be given without holding post. The court fails to appreciate the stand of the respondents if the respondents are at fault and indecisive they cannot be allowed to take plea that 18 years have passed and therefore no relief can be granted to the petitioner.

10. Adverting to Annexure-6, respondents have replied in para-19 which reads as follows:-

**“That the statement made in paragraph no.16, 17 & 19 of the writ petition it is stated that the petitioner is retired on 30.1.2000 which is more than 18 years back, the gradation list for promotion of B.A. & B.Sc. trained teachers were prepared after order of L.P.A. passed by the larger bench of this Hon’ble Court and promotion has been given hence, claimed petition is not acceptable. So far Shanti Sinha is concerned she has not been made party in this present writ application and her case is not similar to the petitioner”**

11. From the material available on record which manifests that respondents have acted most arbitrarily in denying the benefit of



graduate trained scale to this petitioner and in the present proceeding they are taking plea of dilly-dally and lapses.

12. Considering the aforesaid, the Court is of the view that the respondents cannot be allowed to take plea that since they failed to discharge their duty, therefore, the right of the petitioner stands frustrated.

13. Considering the totality of facts situation, the Court directs the respondents to consider the case of the petitioner for grant of promotion as Graduate Trained and Headmaster notionally and work out the entitlement of the petitioner for grant of pensionary benefit on the basis of notional promotion as Graduate Trained and Headmaster within a maximum period of three months from the date of receipt/production of a copy of this order.

14. With the aforesaid, the writ petition is allowed to the extent indicated above.

**(Anil Kumar Upadhyay, J)**

Ravi/-

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| AFR/NAFR          | NAFR        |
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