

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19707 of 2014

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Lakhan Lal Mandal son of Late Shiv Sahay Mandal, retired Head Teacher, Primary School, Fulka, Jamalpur, Munger, resident of Mohalla - Chhoti Keshopur, Dharahara Road, Ward No. 31, P.O. & P.S. Jamalpur, District - Munger

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Human Resources Bihar, Patna
2. The Director, Primary and Adult Education, Government of Bihar, Patna
3. The District Education officer, Munger, District - Munger
4. The District Programme Officer Establishment, Munger, District Munger
5. The Treasury officer, Munger
6. The Accountant General, Bihar, A.G. Office, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Advocate
		Mr. Ram Sevak Choudhary, Advocate
For the Respondent/s	:	Mr. AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 07-09-2018

1. Heard learned counsel for the petitioner.

2. This writ petition was filed on 14.11.2014 after service of two advance copies to the office of the Advocate General. Even after lapse of four years no counter affidavit has been filed on behalf of the respondent.

3. Learned counsel for the petitioner Mr. Siya Ram Sahi submits that the petitioner has retired from his service. The petitioner is aggrieved by non-consideration of the up-gradation and non-consideration of the case of petitioner for grant of pay scale in Grade-III in terms of promotion Rules. 1993 promotion Rules prescribed definite modality for grant of promotion from



basic grade upwards on completion of Kalawadhi. A teacher is entitled to up-gradation in the Grade-I onwards. The present writ application involved the issue of inaction on the part of the respondents i.e. non-consideration of the case of the teacher including this petitioner for grant of benefits which accrued to the petitioner in terms of promotion Rules 1993 which provides for up-gradation on completion of Kalawadhi and as such it is solemn duty of the respondent to see that the up-gradation in terms of 1993 Rules is extended to those who qualifies in terms of the Promotion Rules-1993.

4. Learned counsel for the petitioner submits that the petitioner has completed 18 years of service and as such in terms of Rule petitioner was entitled to up-gradation from basic pay scale to Scale III in terms of 1993 Rules but due to inaction on the part of the respondents, petitioner superannuated from service but not granted the benefit of up-gradation in terms of 1993 Rules.

5. As noted above in the instant case respondents state have not filed any counter affidavit even after 4 years of filing of the writ application.

6. Under the aforesaid circumstanced, the writ petition is disposed of with the direction to the respondent



Director Primary Education to see that the benefit of up-gradation from grade II to grade III is made available to the petitioner if the petitioner is otherwise eligible in terms of 1993 promotion Rules. It is made clear that the respondents cannot take the plea that now the petitioner has superannuated and as such the petitioner cannot be granted such benefit. It is now well-settled that one cannot take advantage of ones own laches. If respondents were under obligation under the statutory Promotion Rules to grant up-gradation from basic Grade upwards on completion of Kalawadhi then the respondent cannot deny the benefit of promotion to the petitioner on account of their failure in finalizing the list and their reluctance in granting such Promotion to eligible candidates including the petitioners. Accordingly, the respondents are directed to take final decision on the claim of the petitioner for grant of promotion to Grade-III if not already taken within a maximum period of four months from the date of receipt/production of a copy of this order with all consequential benefit.

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

(Anil Kumar Upadhyay, J)

T.Kr./-banti

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