

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10395 of 2016

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1. Nathuni Singh, Son of Late Ramjag Singh, resident of Mohalla- Lakhnu Sarai, Police Station-Sasaram in the District of Rohtas
 2. Anjani Kumar Mishra, Son of Late Gayadat Mishra, resident of Village- Aruhin, Police Station-Karahgar in the District of Rohtas
 3. Lalan Singh, Son of Late Musafir Singh, resident of Village- Sikathi, Police Station-Sanjauli in the district of Rohtas

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary-cum- Education Commissioner, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna
5. The District Education Officer, Rohtas
6. The District Programme Officer (Establishment), Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Vijay Bharti, AC to SC-7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-02-2018

Heard learned counsel for the petitioners and State.

The grievance of the petitioners in the present writ application is denial of monetary benefit on promotion in Graduate Trained Scale, Headmaster Scale and Senior Scale of Headmaster.

Learned counsel for the petitioners submitted that earlier the petitioners have approached this Court in C.W.J.C. No. 15565 of 2012 and this Court vide order dated 19.02.2014, as contained in Annexure-2, disposed of the writ application with a direction to file exhaustive representation indicating therein that the juniors to the



petitioners have been granted the benefit of Graduate Trained Scale, Headmaster Scale and Senior Scale of Headmaster. The respondents have examined the representation of the petitioners and vide Annexure-1 they have accepted the contention of the petitioners that juniors have been granted promotion in Headmaster Scale and Senior Scale of Headmaster w.e.f. 01.04.1985 and 01.04.1997 and as such vide Annexure-1 the District Education Officer and District Programme Officer (Establishment) has issued order granting promotion to the petitioners with effect from the date the juniors have been granted promotion in the pay scale of Headmaster Scale w.e.f. 01.04.1985 and Senior Scale of Headmaster w.e.f. 01.04.1997. However, in the case of petitioners, the respondents have passed order that the benefit of promotion would be only notional and petitioners are not entitled to monetary benefit on the ground that the petitioners have not discharged the duty of Head Master and Senior Scale of Headmaster and as such the petitioners are not entitled to the monetary benefit.

The law is well settled, the respondents cannot take advantage of its own wrong, since the failure was on the part of the respondents and as such the respondents cannot take the plea that the petitioners have not worked and as such the petitioners are not entitled to the salary of Head Master and Senior Scale of Headmaster, once



they admitted that juniors have been granted promotion in the pay scale of Head Master and Senior Scale of Headmaster, as a matter of corollary, it follows that the respondents have to restore and grant all the benefits to which the petitioners are entitled, as juniors have granted such benefits. The respondents cannot defeat their right on account of their failure in granting promotion to the petitioner while granting promotion to juniors to the petitioners.

In fact, Chief Justice Chagla of Bombay High Court has the occasion to examine the plea of respondents as to disentitlement of the petitioners for the lapse of the respondents. His Lordship has laid down the principle applicable in the case where the petitioners' right was sought to be defeated on the ground of lapse of the respondents. The relevant part of the judgment in the case of **All India Groundnut Syndicate Ltd. vs Commissioner Of Income Tax, Bombay City**, reported in **AIR 1954 Bombay 232**, reads as follows:

“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 claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

Accordingly, the Court has no hesitation in holding that the respondents cannot defeat the right of the petitioners for monetary benefit only on the ground that the petitioners have not worked on the post of Head Master and Senior Scale of Headmaster, as they have superannuated while juniors were granted such benefit ignoring seniority of the petitioners.

The petitioners cannot be made to suffer for the lapse of the respondents, accordingly, the writ application is allowed. The order as contained in Annexure-1, so far as notional promotion is concerned, is hereby quashed and the respondents are directed to extend all monetary benefits to the petitioners on account of their promotion as Head Master w.e.f. 01.04.1985 and Senior Scale of Headmaster w.e.f. 01.04.1997 within a maximum period of three months from the date of receipt/production of a copy of this order.

The writ application is allowed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2018
Transmission Date	

