

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13041 of 2014

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Ashok Kumar Thakur S/o Late Sri Lal Deo Thakur Resident of Village Balaha Manorath, P.S. Bajpatti, District Sitamarhi at present working as assistant Teacher, Middle School Rikhauli (Dumra), Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director (Primary Education), Human Resources Development Department, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Muzaffarpur.
4. District Education Officer, Sitamarhi.
5. District Programme Officer (Establishment), Sitamarhi.
6. The Promotion Committee through its Chairman, District Education Officer, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukul Sinha, Advocate
		Mr. Suraj Kumar, Advocate
For the Respondent/s	:	Mr. Ravi Verma, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 07-09-2018

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

2. Learned counsel for the petitioner submits that the respondents have admitted the entitlement of the petitioner and granted promotion but as per instruction the petitioner was discriminated in the matter of effective date of promotion. Whereas, similarly circumstanced others were granted promotion with effect from 28.11.2012 but in the case of the petitioner, the promotion was effected during the pendency of the writ petition from the date of notification.



3. If the respondents have admitted the entitlement of the petitioner and rectified their mistake, they cannot take advantage of their own mistake and decide the entitlement of the petitioner from the date similarly circumstanced others were considered and granted.

4. In case the benefit of promotion from the date of similarly circumstanced others, has not been granted to the petitioner, liberty shall be available to the petitioner to file a representation before the respondent-authorities who shall be obliged to extend similar treatment of granting such promotion to the petitioner from the date similarly circumstanced others have been granted such promotion as the respondents cannot take advantage of their own wrong and deny the benefit from the due date. The law in this regard is settled by the Chief Justice M.C. Chagla in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom.**

232. The 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 Section 14. 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."

5. In view of the above, the respondents have to adopt corrective measures and grant benefit from the date similarly circumstanced others have been granted such benefit. Final decision in this regard must be taken within a maximum period of four months from the date of receipt/production of a copy of this order.

6. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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