

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10703 of 2014

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Birendra Kumar Singh, son of late Parmeshwar Singh, resident of village – Abhuyee, P.O. Daraunda, Police Station - Daraunda, District - Siwan, at present posted and working as an Assistant Teacher in Govt. Upgraded Girls Middle School Abhuyee, Anchal - Daraunda, District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Siwan.
4. The Regional Deputy Director of Education, Saran Division at Chapra.
5. The District Education Officer, Siwan.
6. The District Programme Officer (Establishment), Siwan.
7. The Block Education Officer, Daraunda, District - Siwan.
8. The Headmaster, Govt. Upgraded Girls Middle School Abhuyee, Anchal- Daraunda, District - Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-09-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has challenged the validity of Memo No.04 dated 04.01.2010 issued by the Director, Primary Education, Bihar, Patna addressed to all the District Magistrates and District Superintendent of Educations.

3. Learned counsel for the petitioner submits that the teachers are governed by the Statutory Promotion Rules, 1993. 1993 Promotion Rules prescribed the modality for grant of promotion from one grade to other grade. There is Kalabadhi prescribed for



upgradation from basic grade upwards for grant of promotion including to Grade-IV. There is Kalabadhi of 8 years of service in Grade-I i.e. in basic grade, which means the trained teachers in the basic grade for promotion to Grade-IV.

4. Learned counsel for the petitioner submits that the petitioner was appointed in the year 1995 and on account of qualification of graduation and training certificate, the petitioner was entitled to grant of promotion in terms of Rule 1993 in Grade-IV on completion of 8 years of service.

5. According to the petitioner, he completed 8 years period in 2003, but due to the lapse of the respondents, promotion was granted to him in 2012. In the meanwhile, the respondent Director, Primary Education has issued letter contained in Memo No.04 dated 04.01.2010, whereby it was clarified that promotion cannot be granted with retrospective effect.

6. Learned counsel for the petitioner submits that Memo No.04 dated 04.01.2010 cannot supersede the Statutory Rule, which provide grant of promotion of completion of Kalabadhi. He submits that the respondents cannot take advantage of their own wrong in not granting promotion in terms of the Statutory Promotion Rule, 1993. Since the petitioner has acquired eligibility for grant of promotion in terms of 1993 Rules in the year 2003 itself, the action of



the respondent in delaying the promotion and taking decision in the case of the petitioner after coming into force 2011 Rule will not disentitle the petitioner from the benefit of consideration and grant of promotion, which accrued to the petitioner in terms of 1993 Rules.

7. Learned counsel for the respondents submits that 1993 Rule was repealed by 2011 Rule and after 2011 Rule, petitioner was granted promotion. With reference to Clause 9 of the Rule 2011 he submitted that the promotion under 2011 Rule is only effective from the date of issuance of notification on the promotional post and as such petitioner's claim is unsustainable in the eye of law.

8. Having considered the rival submissions of the parties, the Court is of the view that the Statutory Rule, which was in place at the time when right to consider and grant promotion accrued to the petitioner is 1993 Promotion Rule and under the 1993 Promotion Rule, the petitioner was entitled to grant of promotion to Grade-IV on completion of 8 years service in Grade-I.

9. Accordingly, the Court holds that the petitioner on completion of 8 years of service in terms of 1993 Rule is entitled to consideration and grant of promotion, as the petitioner has already completed 8 years service in the year 2003 and as such the respondents are obliged to grant promotion in terms of the then prevalent promotional Rule, 1993 and grant promotion in accordance



with Rule 5 of 1993 rules, which prescribed 8 years Kalabadhi from Grade-I for grant of promotion to Grade-IV.

10. In view of the above, the Court holds that Memo No.04 dated 04.01.2010 cannot in any manner restrict the application of statutory Promotion Rule, 1993. Accordingly, Memo No.04 dated 04.01.2010, is hereby declared inapplicable in the case of the petitioner, being in teeth of the Statutory Rules and it came into force much after right to consideration accrued to the petitioner. The respondents are directed to take fresh decision with regard to date of promotion and grant of all consequential benefits to the petitioner in accordance with 1993 Promotion Rules and pass fresh order 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 disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2018
Transmission Date	

