

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 9379 of 2005**

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Yadaw Lal Sah, son of late Sri Jhumak Lal Sah, resident of Village – Sarha, PS – Paharpur, District – West Champaran, presently posted and working as Peon in the office of Deputy Development Officer (Textiles) at Champanagar, PS – Nathnagar, District - Bhagalpur

.... .... Petitioner/s

Versus

- 1 The State of Bihar through Commissioner & Secretary, Department of Industries, Government of Bihar, Patna
- 2 Director, Handloom & Sericulture, Bihar, Patna
- 3 General Manager, District Industries Centre, Bhagalpur
- 4 Deputy Development Officer (Textiles), Champanagar, Nathnagar, Bhagalpur
- 5 Sapan Kumar Goswami, son of Sri Mahadeo Goswami, Resident of Village – Kurthaul, Yadavchak, PS – Phulwarisharif, District – Patna, at present posted as the Accountant –cum- Treasurer, Handloom Incentive Development Scheme, Bhagalpur
- 6 Shakaldeep Yadav, son of Sri Bjrang Ray, Resident of Village – Kurthaul Yadav Chak, PS – Phulwarisharif, District – Patna, at present posted on the post of Store Keeper –cum- Typist at Polyester and Silk Textiles Production Centre, Champanagar, Bhagalpur
- 7 Raja Ram Mahto, son of Muneshwar Mahto, Resident of Village – Salalpur, PO – Mubarkpur, PS – Barh, District – Patna, Clerk –cum- Store Keeper, Tassar, Food Plant Block, Chaibasa, District – Singhbhoom (Jharkhand)

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : M/s Praveen Kr & Rakesh Kr, Advocates  
For the State : Mr Kinkar Kumar, SC IX  
For Respondent No 5 : Mr Amarnath Jha, Advocate

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**CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 10-05-2018**

Heard learned counsel for the petitioner and the respondent-State.

**2** The petitioner was appointed as Peon on 09.12.1976. Subsequently his case was recommended for Grade III post of Typist –cum- Clerk. The recommendation came to be reiterated from time to time uptill 09.07.1984. The grievance of the petitioner was that he



was entitled to grant of promotion since others junior to him had been given the promotion to Grade III post.

**3** Agitating his grievance, the petitioner has earlier moved this Court by filing *CWJC No 10903 of 1999*. Taking note of the fact that at least one of the petitioner's junior had been given promotion to Grade III post with effect from 10.05.1988, this Court, under order dated 25.02.2005 passed on the said writ petition, had directed the respondents to consider the prayer of the petitioner so as to redress his grievance. Apparently, the same was not done.

**4** The petitioner, therefore, filed the instant writ petition. The prayer made in the instant writ petition is for quashing of the office order contained in Memo No 906 dated 18.06.2005 wherein the claim of the petitioner was rejected. Further, prayer made in the writ petition is that since juniors to the petitioner, specifically respondent No 7 has been granted promotion to Grade III post with effect from 06.11.1986, the petitioner was also entitled to promotion on Grade III post with effect from at least 06.11.1986. During pendency of the instant writ petition, the respondents have allowed the claim of the petitioner for promotion on Grade III post of Typist –cum- Clerk with effect from 10.05.1988 and the benefit in respect of this said promotion has also been made available by office orders dated 15.06.2006 bearing Memo No 988 and 28.07.2006 bearing Memo No



1227 which are Annexures C and D to the supplementary counter affidavit filed on behalf of respondents No 1 to 4. The said letters take care of the petitioner's claim with respect to promotion with effect from 10.05.1988 and consequential benefits with effect from the same date.

**5** During pendency of the writ petition, the petitioner, upon grant of the said promotion and having come into the Grade III post, had appeared for the Hindi Noting and Drafting Examination in the very next year so as to ensure compliance with the requirements given in the Bihar Government Servant (Hindi Examination) Rules, 1968 (for brevity, *Hindi Examination Rules, 1968*) . He, therefore, wrote the Hindi Noting and Drafting Examination conducted on 08.10.2006 within one year from the date of promotion. The result of the said process was published on 07.08.2007.

**6** Counsel for the State, on the other hand, submits that from the various orders which are on record, it is quite evident that the petitioner cannot be heard to make a claim for his promotion with effect from 06.11.1986 since the order dated 17.08.2006 passed in *MJC No 1682 of 2005* as also the order passed on the petitioner's contempt application bearing *MJC No 186 of 2007*, the issue regarding the admissibility of promotion with effect from 10.05.1988 stands concluded.



7 This Court would only observe that the claim of the petitioner for grant of promotion with reference to the promotion granted to respondent No 7 has been raised by the petitioner in the instant proceedings much prior to the orders passed on the said contempt petitions which are arising out of the earlier writ petition. Further, the claim of the petitioner for being promoted on Grade III post with effect from 06.11.1986 with reference to respondent No 7 is in fact not denied by the respondents in the pleadings made in the counter affidavit. The admitted position that emerges with reference to paragraph 41 of the counter affidavit is that the said respondent No 7 was junior to the petitioner and has been granted promotion with effect from 06.11.1986. Thus, the admitted claim of the petitioner cannot be defeated or denied by referring to orders passed in the contempt proceedings arising out of *CWJC No 10903 of 1999*. This is being observed since this Court in the proceedings arising out of *CWJC No 10903 of 1999* has taken note of the petitioner's grievance which was as follows:

*“The grievance of the petitioner would be that he would at least be entitled to the said promotion with effect from 10.05.1988 when his junior respondent No 6 came to be so considered and promoted.*

8 The issue which remains for consideration as per submission made by learned counsel for the petitioner is grant of



promotion to the Grade III post with effect from 06.11.1986 that is the date from which his junior, namely, Raja Ram Mahto (respondent No 7) has been granted promotions. Petitioner has specifically asserted the fact that the said Raja Ram Mahto is his junior and has been granted promotion to the Grade III post with effect from 06.11.1986. In response to the specific pleadings in this respect made by the petitioner in his writ petition, the respondents, in their counter affidavit, have offered “no comments”. This situation, therefore, is not disputed. The admitted position that emerges from the stand of the respondents based on the pleadings on record is that junior of the petitioner has been granted the benefit of promotion with effect from 06.11.1986. Therefore, there is no difficulty in holding that the petitioner would also be entitled to promotion to Grade III post with effect from 06.11.1986. Claim of the petitioner to this extent is, therefore, allowed. The respondents are directed to shift back the petitioner’s promotion with effect from 06.11.1986 instead of 10.05.1988.

9 The least admissibility of the petitioner which had been noticed by this Court in the proceedings arising out of CWJC No 10903 of 1999 is to claim promotion with effect from 10.05.1988. That the petitioner could not claim anything more, is not explicit from the said order. The respondents cannot be permitted to rely upon



orders passed in the contempt proceedings arising out of said CWJC No 10903 of 1999 to scuttle the legitimate and admitted claim of the petitioner with reference to grant of promotion to his junior (respondent No 7). The same would have the effect of creating an iniquitous situation.

**10** The other issue is whether the annual increments of the petitioner can be withheld for non-passing of Hindi Noting and Drafting Examination prior to 07.08.2007. It is the specific case of the petitioner that he has written the examination on 08.10.2006 only after having been promoted to Grade III post by order dated 28.07.2006. Prior to having been promoted on Grade III post under order dated 28.07.2006, there was no requirement under the Hindi Examination Rules, 1968 that the petitioner was to appear or pass the Hindi Noting and Drafting Examination. He submits that since he has acquired the qualification for passing the said examination within the period of one year, as prescribed under the Hindi Examination Rules, 1968, the annual increments cannot be withheld for non-passing of Hindi Noting and Drafting Examination prior to his coming in Grade III post as Hindi Examination Rules, 1968 itself contemplate that the Hindi Noting and Drafting Examination is to be passed only by persons who are appointed in Grade III post within a period of one year from such appointment. The requirement under Hindi



Examination Rules, 1968 is, therefore, substantially complied.

**11** The date of promotion of the petitioner has been shifted to an earlier date that is 10.05.1988 and now under the orders of this Court with effect from 06.11.1986 only due to the inaction on the part of respondent-authorities and to rectify the illegality committed by them inasmuch as admittedly junior to the petitioner has been promoted with effect from 06.11.1986 ignoring the legitimate claim of the petitioner who was also duly qualified for promotion and in whose favour, recommendations were made as far back as in the year, 1980 itself.

**12** It is only to rectify the said illegality that the petitioner's date of promotion is being shifted back. Otherwise, as noticed above, he has substantially complied with the requirements under the Hindi Examination Rules, 1968. Therefore, withholding of the increments of the petitioner, as contemplated under order dated 04.11.2009 bearing Memo No 265 is, therefore, unjustified. Since the illegality committed against the petitioner is being rectified by shifting of his date of promotion with effect from 06.11.1986, the benefits/consequences arising thereof cannot be withheld, more so since in substantial compliance of Hindi Examination Rules, 1968, the petitioner has passed the Hindi Noting and Drafting Examination within the period of one year from the date of coming into the Grade



III post.

**13** In view of the observations made hereinabove, the petitioner is entitled to shifting back of his date of promotion to Grade III post with effect from 06.11.1986 with all consequential benefits including annual increments.

**14** The writ petition stands allowed in the terms indicated hereinabove.

**(Madhuresh Prasad, J)**

**M.E.H./-**

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