

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22955 of 2013

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Janardan Prasad, Son of Late Ram Jiwan Prasad, Resident of Village - Saokatia,
P.S. Sangrampur, District - Munger, Presently working as Headmaster Incharge,
Upgraded Middle School, Rattu Chak, P.S. & Anchal - Belhar, District - Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Education Department, Government of Bihar,
Patna
4. The District Magistrate, Banka, District - Banka
5. The District Education Officer, Banka, District - Banka
6. The District Education Officer (Establishment), Banka, District - Banka

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate

For the Respondent/s : Mr. Anwar Karim, AC to GP-10

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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 filed the present writ application
for a direction to the respondents to grant him promotion in terms of
the gradation list (Annexure-2).

3. Learned counsel for the petitioner submits that the
petitioner was at serial no. 26 of the gradation list, but the case of the
petitioner was kept in abeyance on the ground of seeking guideline
from the higher authorities whether the degree of B.Sc. (Engineering)
is equivalent to science graduate or not.

4. On behalf of respondents, a counter affidavit has
been filed and in para 4 the following stand has been made:

“4. That in reply to para-1 of the writ petition it
is submitted that as stated by the petitioner being



BSC Engineering qualification, a guideline was sought from the Director (P.EE) vide letter dated 11.05.2011 that whether on the basis of Engineering degree, petitioner is eligible to be promoted in graduate trained scale (Annexure-5 to this writ petition). Guideline was received by the respondent vide letter dated 20.04.2012 (Annexure-5 A to this writ petition) that as per the decision taken by the department BSC (Eng.) degree is equivalent to graduate, and they are entitle for promotion in graduate trained scale. In view of the guideline of department the petitioner was promoted in graduate trained scale vide letter dated 01.12.2012. As per the letter dated 04.01.2010 no promotion can be given from retrospective (BHOOTLAKSHI) effect. Hence, the grievance of the petitioner is not justified in the eyes of departmental rule.”

5. From the averments made in para 4, it is admitted position that the petitioner was granted promotion vide letter dated 01.12.2012. The respondents took the plea that in terms of letter dated 04.01.2010 promotion cannot be granted from retrospective date and, therefore, the petitioner cannot be granted promotion from the date prior to 01.12.2012.

6. The Court failed to appreciate the stand of the respondents inasmuch as the delay was occasioned on account of the indecisiveness of the respondents. The case of the petitioner for grant of promotion was kept in abeyance for guideline how to treat the



qualification of B.Sc. (Engineering). The guideline was provided on 20.04.2012 and thereafter on 01.12.2012 the petitioner was granted promotion. It is now well settled that one cannot take advantage of their own lapse. Admittedly, in the present case, indecisiveness is on the part of the respondents and as such the respondents cannot take the advantage of their own lapse in denying promotion from the due date when the petitioner was entitled for grant of promotion on account of seniority position in the gradation list.

7. Accordingly, the order of the respondents granting promotion dated 01.12.2012 is hereby quashed to the extent that the respondent may fix the date of promotion from the date the junior to the petitioner in the gradation list (Annexure-2) was granted promotion. Necessary corrective measures in this regard must be taken by the respondents for fixing the date of promotion with all consequential benefits within a period of four months from the date of receipt/production of a copy of this order.

8. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2018
Transmission Date	

