

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17625 of 2008

1. Mukeshwar Dayal.

2. Manoj Dayal.

Both sons of late Brijeshwar Dayal (original petitioner).

3. Sushma Dayal.

4. Reshma Dayal.

5. Shama Dayal.

All are daughters of Late Brijeshwar Dayal (original petitioner).

All are residents of Mohalla- M.P. Sinha Road, Kadamkuan,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar having his office in Old Secretariat, Patna.

2. The Agriculture Production Commissioner, Department of Agriculture, State of Bihar having his office in Vikas Bhawan, New Secretariat, Patna.

3. The Bihar Public Service Commission through its Chairman having his office in 15 Bailey Road, Police Station- Shastri Nagar, District- Patna.

4. The Accountant General, Bihar, Birchand Patel Marg, Patna.

5. The Principal Secretary, Agriculture Department, Bailey Road, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv.

For the Respondent-State : Mr. Deepak Sahay Jamuar, AC to AAG-4

For the Respondent-BPSC: Mr. Ashok Kumar Choudhary, Adv.

Mr. Anil Kumar Tiwary, Adv.

For the Respondent –AG : Mr. Arun Kumar Arun, Adv.

Mr. Atul Anand, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-06-2018

Leave is granted to the learned counsel for the petitioners
to add the Principal Secretary, Department of Agriculture,
Government of Bihar, Patna as respondent no.5 during the course of
the day.

Heard Mr. Rupak Kumar, learned counsel appearing for
the petitioners, Mr. Deepak Sahay Jamuar, learned Assisting
Counsel to Additional Advocate General No.4 for the State, learned
counsel appearing for the Bihar Public Service Commission and



learned counsel appearing for the Accountant General.

With the consent of the parties and taking note of the pendency of this matter for past almost a decade that the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The original petitioner late Brijeshwar Dayal had filed this writ petition for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.1706 dated 25.6.2002, whereby the claim of the petitioner for promotion to the post of Additional Director and Director, Agriculture in the light of the direction issued by this Court in CWJC No.1357 of 1991 has been rejected.

A consequential direction has been sought by the original petitioner to the respondents to consider his claim in the light of the situation discussed in the writ petition.

A plain reading of the order impugned in the writ petition at Annexure 1 would confirm that it is simply hiding behind the nature of the post as ex-cadre and since according to the Agriculture Production Commissioner, the deceased petitioner never officiated on the post of Additional Director, Agriculture or any equivalent post nor on the post of Agriculture Director hence the claim was not fit to be entertained.

As noted the original writ petitioner Brijeshwar Dayal deceased during the pendency of the writ petition and has been



substituted by his sons and daughters who chosen to pursue the matter. Since the issues raised by Mr. Rupak Kumar, learned counsel appearing on behalf of the petitioners in support of the claim advanced stand noted in the order of this Court recorded on 5.7.2017 and 11.4.2018, for the sake of convenience I deem it proper to reproduce an extract of the order passed on 11.4.2018 which summarily discusses the issues raised in support of the claim advanced and which runs under:

“

In substance the argument of Mr. Rupak Kumar in reference to the document placed on record of the proceedings as well as the supplementary affidavit filed today is that while Annexure 14 to the supplementary affidavit makes it very clear that the hierarchy of the Bihar Agriculture Service Class-1 is as follows:

- (1) Junior Selection Grade;
- (2) Senior Selection Grade;
- (3) the Super Time Scale;
- (4) the Additional Director;
- (5) the Agriculture Director.

He next refers to the order at Annexure 2 to submit that this petitioner was notionally promoted to the Super Time Scale which is the feeder post for the post of Additional Director vide order passed on 9.5.2002 with effect from 25.3.1985. He submits that this substantive promotion of the petitioner in the Super Time Scale with effect from 25.3.1985 made him entitled for consideration of his case for promotion against the post of Additional Director.

It is in reference to the seniority-list at Annexure 7 to the reply to the counter affidavit of respondent no.2 it is submitted that while the petitioner is at serial no.3, one Madan Bihari Sharan is at serial no.11 and even though the said Madan Bihari Sharan holding the post in the Super Time Scale, was promoted as Additional Director after his superannuation on 31.3.1997 vide order dated 12.11.1999 enclosed at Annexure 8 with effect from 31.12.1990, the claim of the petitioner is being resisted on incorrect grounds. He submits that the promotion of Madan Bihari Sharan



has vested a right in the petitioner to claim promotion from the date the said officer has been promoted but the claim has been rejected by the impugned order at Annexure-1 on grounds that the post of Agriculture Director and Additional Director is ex-cadre selective post and that the petitioner has never functioned against the post of Additional Director.

He submits that in view of the hierarchy in the Bihar Agriculture Service (I) present at Annexure 14, the order in so far as it classifies the post of Additional Director as 'ex-cadre', stands falsified and even the objection that the petitioner has never functioned against the post of Additional Director stands falsified by the numerous enclosures to the proceedings which supports not only the functioning of the petitioner as Additional Director but also as the Agriculture Director, on which post he officiated until his superannuation.

He thus submits that if not earlier, at least the petitioner was entitled for promotion from the date Madan Bihari Sharan was promoted as well for his consideration to the post of Agriculture Director as per the Rules. ”

Since the claim advanced by Mr. Rupak Kumar was resting on documents enclosed in the writ petition as well as the supplementary affidavit filed, that time was allowed to the learned State Counsel to respond to the position.

It is after several adjournments that the Principal Secretary, Agriculture Department has chosen to file a counter affidavit through the Deputy Director, Agriculture and in so far as the complaint made by the deceased petitioner of denial of promotion to the post of Additional Director is concerned, very fairly the respondents taking note of the contentions advanced by the deceased petitioner at paragraphs 8 and 12, has accepted that Madan Bihari Sharan was junior to the deceased petitioner and was granted



promotion as Additional Director. At paragraph 20 of the counter affidavit it is also admitted that it is following the order of this Court that the case of said Madan Bihari Sharan was considered for promotion as Additional Director with retrospective effect and vide notification bearing No.4001 dated 21.11.1999 promotion was granted to him with effect from 31.12.1990 until his superannuation on 31.3.1997.

In view of the position discussed by the respondent Principal Secretary at paragraphs 8, 12 and 20 there is no obstacle for consideration of the case of the deceased petitioner for promotion in the rank of Additional Director at least with effect from the date his junior, Madan Bihar Sharan was given promotion i.e. 31.12.1990 as admitted at paragraph 20 of the counter affidavit.

In so far as the claim of the deceased petitioner to the post of Director, Agriculture is concerned, he superannuated on 30.4.1992 and it has been fairly accepted by the respondent Principal Secretary that the post was vacant from 30.12.1990 until the superannuation of the deceased petitioner. It is the contention of Mr. Rupak Kumar that although there is a '*Kalawadhi*' prescribed for promotion from Super Time Scale to the post of Additional Director but in so far as the promotion to the post of Director, Agriculture from the post of Additional Director is concerned there is no such prescription rather it is to be tested on the basis of seniority cum merit. He submits in reference to the admission of the respondents at



paragraph 23 that while the deceased petitioner was posted as Director, Bihar State Seed Marking Agency, Patna, he was authorized to discharge the duty of the Director, Agriculture and thus there cannot be any impediment in the path of the deceased petitioner for consideration of his case for promotion to the post of Director, Agriculture since he was discharging such duties as on the date of his superannuation.

While Mr. Jamuar. learned counsel appearing for the State has submitted that in the nature of the position explained in the counter affidavit, should this Court direct, the case of the deceased petitioner would be considered afresh in the light of the circumstances noted. Learned counsel appearing for the Bihar Public Service Commission submits that the role of the Commission would only initiate, once the recommendation in this regard is forwarded by the department concerned.

Having considered the submissions of learned counsel for the parties and taking note of the undisputed materials on record, one thing is eloquent and that is the illegality in the reasons assigned by the Agriculture Production Commissioner for denial of the claim of the deceased petitioner in his order dated 25.6.2002 impugned at Annexure 1 to the writ petition for neither the eligibility nor the nature of post of Additional Director, are impediment for such consideration.

The second undisputed position is that the junior to the



deceased petitioner, namely, Madan Bihari Sharan was granted promotion to the post of Additional Director with effect from 31.12.1990 vide Memo No.4001 dated 21.11.1999.

The third relevant aspect which is also admitted is that the deceased petitioner was holding the post of Director, Agriculture as on the date of his superannuation on 30.4.1992 with no complaint coming against his discharge.

In view of the undisputed position noted above, where the junior to the deceased petitioner Madan Bihari Sharan was promoted on the post of Additional Director vide notification bearing No.4001 dated 21.11.1990 with effect from 31.12.1990 on the recommendation of the Bihar Public Service Commission, the respondents cannot deny similar consideration to the deceased petitioner for promotion to the post of Additional Director.

In so far as the relief relating to promotion as Director is concerned, since the deceased petitioner is entitled to consideration of his claim for promotion as Additional Director with effect from the date Madan Bihari Sharan was promoted i.e. 31.12.1990 and there were two years yet intervening in between the said date and the date of superannuation of the deceased petitioner i.e. 30.4.1992, he becomes entitled for consideration of his case for promotion as Director, Agriculture on the self same grounds and especially when he was found officiating on the post on the date of his superannuation with no complaint found against the discharge.



For the reasons so assigned, the order bearing Memo No.1706 dated 25.6.2002 of the Agriculture Production Commissioner impugned at Annexure 1 cannot be upheld and is accordingly quashed and set aside. The matter is accordingly remitted to the Principal Secretary, Department of Agriculture, Government of Bihar, Patna for consideration of the claim of the deceased petitioner for promotion as Additional Director and Director, Agriculture afresh in the light of the position discussed above as well as its disposal in accordance with law, to be done within a maximum period of three months from the date of receipt/production of a copy of this judgment.

It goes without saying that should an order be passed in favour of the deceased petitioner, the consequences would also have to follow.

The writ petition is allowed with directions above but with no order as to costs.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28-06-2018
Transmission Date	NA

