

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10316 of 2014

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Yogendra Baitha S/o Late Machhu Baitha, Resident of village + Post Office-
Kalapahar, Police Station- Jandaha, District- Vaishali, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Agriculture Production Commissioner, Bihar, Patna
4. The Secretary, Department of Agriculture, Bihar, Patna
5. The Director, Department of Agriculture, Bihar, Patna
6. The Deputy Secretary, Department of Agriculture, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra
For the Respondent/s : Mr. GP5- RAJIV ROY

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-01-2018 1. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 24.09.2012 with a further prayer to grant regular promotion to the petitioner on the post of Joint Director, Agriculture, from 01.10.1993 and to pay salary (Super Time Scale) of Joint Director on which petitioner performed his duty from 28.10.1993 to 31.01.2001 i.e. the date of his superannuation.

2. Briefly stated, the facts of the case is that petitioner came in Class I service by way of promotion in the year 1985 vide notification dated 27.09.1989 which was renamed as Junior Selection Grade. Promotion from 1st grade to another grade is made after a fixed period as prescribed and on completion of said period employee is entitled for promotion in the higher



grade which is five years and after completing five years of service in Junior Selection Grade petitioner was promoted to Senior Selection Grade vide memo dated 18.07.1992 which was subsequently preponed as 01.10.1990.

3. After completion of three years of service petitioner became eligible for promotion in Super Selection Grade in the year 1993 and was asked to work on the post of Joint Director, Koshi Command Area, Saharsa in his own pay scale vide notification dated 28.10.1993. Petitioner was also given charge of Joint Director, Koshi Division vide memo dated 09.05.1994 and he assumed charge as Joint Director, Koshi, Saharsa which was confirmed by the department of Agriculture vide notification dated 30.06.1994. Petitioner worked as Joint Director, Agriculture which is the post of Super Selection Grade from 28.10.1993 and retired on 31.01.2001 without salary of Super Selection Grade.

4. Name of the petitioner appeared in the list for promotion in Super Selection Grade (Joint Director of Agriculture) before the Departmental Promotion Committee held on 09.01.1997 but his name was not considered as 5 vacancies meant for Scheduled Caste category were filled from said list who were above petitioner in the subsequent meeting



held on 29.07.1999 the name of petitioner could not be considered as he was under suspension. One of the persons from Scheduled Caste category namely, Sri Baban Ram who was promoted to the post of Joint Director, Agriculture retired from service on 31.03.1999 and said vacancy was a roster point of the Scheduled Caste which fell vacant and petitioner who was just next in the list had become entitled for promotion but was not promoted.

5. Petitioner was awarded punishment of “Censure” by order dated 31.03.1999 and as per the circular of State Government dated 17.05.1982 effect of censure will be for three years from year of misconduct. The year of misconduct was 1994-95 and effect of censure came to an end in 1997-98, as such there was no impediment for promoting the petitioner from 31.03.1999 when Baban Ram retired from the service. However, as per statement made in counter affidavit the charges against the petitioner was for the year 1995-96 and as such same remained effective till 1998-99 and subsequently by resolution dated 09.08.1999 the grant of promotion in Super Time Scale was abolished with effect from 01.01.1996 as such even petitioner became eligible for grant of Super Time Scale but since it was abolished from 01.01.1996 same could not be



granted.

6. It has been further submitted by the counsel for the State that petitioner served as Joint Director in his own pay scale.

7. After hearing the parties and going through the materials available on record it is an admitted position that petitioner discharged the duties as Joint Director from 28.10.1993 till 31.01.2001 i.e. date of his retirement as such as per the law laid down by the Apex Court he is entitled for salary for the post of Joint Director (Super Selection Grade) for the period from 28.10.1993 till 31.01.2001.

8. Counsel for the petitioner has relied upon a judgment of Apex Court passed in Secretary-cum-Chief Engineer, Chandigarh Versus Hari Om Sharma & Others reported in 1998 (5) SCC 87 in para 6 and 8 of said judgment. It has been held that if the employer takes work from employee on higher post then employee is entitled to receive the salary of higher post. The relevant paragraph 6 and 8 of said judgment is quoted below:-

*6. Having regard to these facts, we
are of the view that the Tribunal
was fully justified in ordering that*



the respondent shall be promoted on the basis of “quota” fixed for non-diploma-holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since



1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent



being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.
(emphasis is mine)



9. The ground on which the case of the petitioner for his regular appointment on the post of Joint Director has been rejected by the department as contained in Annexure-17 by order dated 24.09.2012 is also erroneous and untenable. The petitioner was already working on the post of Joint Director and he was to be given regular promotion on said post. The reason given in the order that since Super Time Scale was abolished from 01.01.1996 after coming of 6th pay revision by resolution of Finance Department dated 09.08.1999 cannot be accepted as even the scheme of Time Bound Promotion was abolished in 6th pay revision, the post of Joint Director was not abolished and time bound Scheme was replaced by ACP Scheme with effect from 09.08.1999 as such, denial of promotion of petitioner on that ground cannot be sustained and petitioner will have to be treated as promoted on regular basis on the post of Joint Director. The stand of respondents cannot be accepted as they themselves have issued a notification as contained in Annexure-14 of Department of Agriculture, Government of Bihar dated 12.11.2008 by which recommendation for promotion in Super Time Scale has been made with a condition that benefit of promotion is conditional to resolution No. 660 dated 09.08.1999 issued by Finance Department by which 6th pay revision was



made effective from 01.01.1996 even otherwise as held above petitioner is entitled for the salary of the post of Joint Director (Super Time Scale) for the period from 28.09.1993 to 31.01.2001 and his pension and gratuity and other post service benefits has to be revised as per the enhanced pay scale as indicated above. However, since the petitioner has approached this Court in the year 2004 for the first time although he retired on 31.01.2001 and never raised any grievances prior to his retirement either for his regular promotion on the post of Joint Director (Super Time Scale) or payment of salary on the post of Joint Director but wrong fixation of pay scale is a continuing wrong his petition cannot be dismissed for delay and laches but he cannot be given monetary benefit of payment of arrears of salary for the period he worked on the post of Joint Director from 28.10.1993 to 31.01.2001 and is entitled for only the revision of his pension, gratuity and other post retirement benefits, as no monetary relief can be granted for the period prior to three years from date of filing of writ petition.

10. The order dated 24.09.2012 as contained in Annexure-17 is quashed. The respondent authorities are directed to revise the pension and gratuity and other post service benefits of the petitioner on the enhanced pay scale of Joint Director



(Super Time Scale)

11. The writ petition stands allowed to the extent as indicated above.

(S. Kumar, J)

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Transmission Date	

