

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.236 of 2018

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Smt. Sudha Sinha, Daughter of Late Nathuni Prasad Lal, resident of Mohalla-Mishri Tola, P.S.- Sultanganj, P.O.- Mahendru, District- Patna and presently Head Mistress, Taken over Middle School, Sukulpur, Circle- Fatuha..... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
 2. The Director (Primary Education), Human Resource Development Department, Government of Bihar, New Secretariat, Patna.
 3. The District Superintendent of Education, Patna.
 4. The Block Education Officer, Fatuha. Respondent/s
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Appearance :

For the Petitioner/s : Mr. Akashdeep, Advocate

For the Respondent/s : Mr. Umesh Narayan Dubey, GP- 27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 09-03-2018

Heard learned counsel for the petitioner and State.

2. The grievance of the petitioner in the present writ application is denial of actual monetary benefits out of promotion to the post of Principal/Head Mistress of upgraded Middle School, Sukulpur, Fatuha, Patna.

3. A short submission has been advanced by Mr. Akashdeep that the respondents have granted promotion to the petitioner w.e.f. 26.12.2013, but they are denying the consequential benefit of promotion treating the promotion, as notional from 26.12.2013, as actual promotion is w.e.f. 30.03.2017, from the date of joining pursuant to order dated 29.03.2017.

4. Mr. Akashdeep, learned counsel for the petitioner



submits that earlier the petitioner was granted promotion on 26.12.2013, however, she was subjected to departmental proceeding and as such her promotion was cancelled vide order dated 15.01.2014. He submits that notwithstanding the cancellation of promotion, the petitioner continued to work on the post and discharged the responsibility of the Headmistress of the school without any interruption. Once the departmental proceeding culminating in favour of the petitioner, the respondents issued order on 29.03.2017 and granted promotion to the petitioner w.e.f. 26.12.2013, but notionally denying the monetary benefit of such promotion.

5. The principle of notional promotion was introduced where promotion was effected from retrospective as the incumbent has not worked on the promotional post. It is by no stretch of imagination that notional promotion can be resorted to deny the consequential monetary benefit in a situation where a person like the petitioner continuously worked on the promotional post and there is no break in discharge of duty as headmistress of the school.

6. In para 9 of the counter affidavit, the respondents have admitted the following facts. Para 9 of the counter affidavit reads as follows:

‘9. That so far as the statements made in para 12 & 14 of this writ application, it is most humbly submitted that actual payment cannot be given with



retrospective date. However, promotion can be given notionally with retrospective date. Therefore, the petitioner has been given notional promotion w.e.f. 26.12.13 to the post of headmaster and her pay of promotional post has been fixed w.e.f. 26.12.13 itself. But, the petitioner is entitle for receiving the monetary benefits from the date of joining on the said post in accordance with law. It is relevant to point out here that prior to promotion to the post of Headmaster the petitioner was functioning as In charge of her school and on that ground she cannot be allowed to claim any financial benefits.”

7. However, Mr. Jha, learned counsel for the respondents submits that the petitioner was working as incharge headmistress, and not a regular headmaster, and as such she is not entitled to payment of salary.

8. The stand of the respondents does not appeal to reason, and petitioner was earlier granted promotion and after effecting promotion, promotion was cancelled, yet the petitioner was allowed to discharge the same responsibility from 2014 to 2017 when after exoneration of the petitioner in the departmental proceeding, the respondents restored the promotion w.e.f. 26.12.2013.

9. In the aforesaid circumstances, when the respondents themselves restored the promotion of the petitioner from the date she was granted promotion initially, but for the reason that the departmental proceeding intervene in between and as such her



promotion was cancelled. Considering the totality of the facts situation, the Court is of the considered view that this is a case where the respondents cannot deny the monetary benefits to the petitioner saying that the petitioner's promotion is notional w.e.f. 26.12.2013 and monetary benefits is only admissible to the petitioner after joining of the petitioner afresh on the post. This submission is only artificial, as the petitioner has all through discharged the duty of the headmistress and as such the petitioner is entitled to not only counting of her experience as headmistress w.e.f. 26.12.2013, but also entitled to the entire consequential benefit including the monetary benefits, as the petitioner is regularly discharging the responsibility of the Principal/headmistress right from 26.12.2013 till the date of her joining afresh on 30.03.2017 pursuant to order dated 29.03.2017.

10. Accordingly, the writ application is allowed. The respondents are directed to work out the consequential benefits and extend the same to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	.03.2018
Transmission Date	

