

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2647 of 2016

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Syed Nehaluddin Ahmad (retired Salesman, Khadi Bhawan, Patna) son of Late Syed Eabaluddin Ahmad, Presently residing at C/o Sultan Quadri, Mohalla- Shahtoli, Danapur Cantt., Police Station- Danapur, District- Patna, 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Bihar State Khadi and Village Industries Board, through the Chairman/Chief Executive Officer, Mahesh Bhawan, Gandhi Maidan "East", Patna-4.
3. The Chief Executive Officer, Bihar State Khadi and Village Industries Board, Mahesh Bhawan, Gandhi Maidan "East" Patna-4
4. The District Khadi Gramodyog Officer cum Administrator, Khadi Bhawan, Patna-4.
5. The Vyabasthapak/Manager, Bihar Rajya Khadi Gramodyog Bhawan Khadi Bhawan, Patna-4.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate
For the Respondent/s	:	Mr. M.K. Ambastha- S.C.-26
		Mr. Balram Kapri, A.C. to S.C.-26
For the Khadi Board	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 08-08-2019

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel for the Bihar State Khadi and Village Industries Board.



2. In the present case, the petitioner is seeking the identical relief of time bound promotion as has been granted to Yugeshwar Kunwar, who was also appointed by the Bihar State Khadi and Village Industries Board (hereinafter referred to as “the Khadi Board”) and was working as Manager in the Manufacturing Department of Matches i.e. also a plan head post whereas this petitioner was also working as Salesman in the Khadi Bhawan and superannuated in the year 2015.

3. The effort has been made by learned counsel for the Khadi Board of creating a distinction between plan head post and non-plan head post, having stated that certain posts were identified by the Government and those posts treated to be non-plan head posts and rest posts against which grants comes from the Government are plan head posts and those who are working in non-plan head posts would get all facilities including the time bound promotion but, those who are under the plan head posts, the persons working as Salesmen were treated to be in the plan head posts, would not get same facilities as that of non-plan head posts. The Government had taken a decision that the employees working in the plan head posts will get benefits proportionate to the profit earned by the Sales centres but, this issue has already been settled in *Sita Devi vs. Bihar State*



Khadi and Village Industries Board [2004 (4) PLJR 565] and this Court has criticized the creation of two class of employees working in the non-plan head and the plan head and thereafter the Government has taken a decision for obliterating of such artificial creation of two classes. When Yugeshwar Kunwar was denied the benefit of time bound promotion, he approached this court in C.W.J.C. No.12806 of 2009 and this Court after placing reliance on the decision of ***Sita Devi (supra)*** has allowed the writ petition and directed the respondents to grant the benefit of time bound promotion to Yugeshwar Kunwar. Khadi Board was not satisfied with the view taken by the Single Judge, filed L.P.A. No. 1674 of 2016 but, this time also the Khadi Board was unsuccessful and the Division Bench approved the view taken by the learned Single Judge. However, it is not end of the story, the story comes that Khadi Board again filed a Civil Review vide Civil Review No. 130 of 2018 before the Division Bench for taking a different view which has been taken earlier but, the Division Bench has refused to accede the request of the Khadi Board and placed reliance on the judgment of ***Sita Devi (supra)*** and also quoted in extenso the Notification of the Government, whereby the classification has been obliterated and they have been treated to be homogeneous class for all purposes. While



rejecting the request of the Board, the Division Bench has also placed reliance on the decision of the Apex Court rendered in the case of *D.S. Nakara and Others vs. Union of India* reported in *(1983) 1 SCC 305*, which itself postulates that there cannot be a class in the class itself and the authority cannot be allowed to create an artificial class in order to deprive the rightful claim of an employee.

4. Learned counsel for the petitioner has drawn the attention of this Court to the order dated 04.05.2016 (Annexure-D to the counter affidavit) wherein it has been recorded that the petitioner is entitled to first and second time bound promotion.

5. Learned counsel for the Khadi Board submits that it is a very stale claim, inasmuch as, the posts have been sanctioned in the year 2007, but this is the same situation with Yugeshwar Kunwar, did not receive favourable order from the Division Bench. Now, for the first time the plea of staleness has been taken and the right which has been claimed is under the statutory provision, cannot be deprived to the petitioner.

6. As it appears that consistent view has been taken by this Court in different levels now, it is binding precedent to this Court, so, the effort and endeavour of the Khadi Board to



dislodge the claim of the petitioner is not acceptable to this Court. Accordingly, this Court directs the respondents to grant the benefit of first and second time bound promotion to the petitioner in accordance with law within a period of three months from the date of receipt/production of a copy of this order. It is expected that the Government will allot the fund in order to facilitate the Khadi Board to give the benefit of time bound promotions to the petitioner.

7. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.08.2019
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