

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7469 of 2015

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Kumar Ganesh Prasad Singh son of Late Janardan Prasad Singh resident of village P.O. and P.S. - Dighwara, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Saran at Chapra.
5. The District Education Officer, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Advocate
For the Respondent/s : Mr.Nirbhay K.Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 15-07-2019 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Earlier the petitioner had approached this Court by filing CWJC No. 10790 of 2018 which was dismissed as not pressed on the understanding that the petitioner would be getting the relief from the respondents. The respondents have not granted any relief.

There is no dispute that in terms of the scheme of time bound promotion, which was available up to 31st of December, 1995, the petitioner was entitled to first time bound promotion on completion of 12 years of service. There is also no dispute



that subsequently a decision was taken by the respondents to grant senior scale on completion of 12 years with effect from 1.1.1996.

Learned counsel appearing on behalf of the respondents would submit that the present writ petition is not maintainable as the petitioner had earlier approached this Court and he has not pressed the writ petition and as such the present writ application is barred by principle of res judicata. A Constitution Bench of the Apex Court had occasion to decide the issue of constructive res judicata in the case of Daryao and others Vs. the State of U.P. & Ors: AIR 1961 SC 1457.

In view of the judgment of the Apex Court in the case of Daryao (supra), the Court is not impressed by the submission advanced by the State. Technicality does not come in the way of granting relief. The Apex Court has occasion to discuss the scope of Article 226 in the case of Dwarika Nath Vs. Income Tax Officer: 1965 (3) SCR 531 where Justice Subba Rao has the occasion to underline the scope of writ jurisdiction under Article 226 of the Constitution. The judgment of the Apex Court in that case is demonstrative of the parameters of writ jurisdiction under Article 226 of the Constitution. Article 226 is couched in most comprehensive phraseology and ex facie confers a wide



power on the High Court to reach injustice wherever it is found. This view was reiterated time and again including in the case of Anandi Mukta Sadguru Shree Mukta vs V.R. Rudani & Ors : AIR1989 SC 1607.

In view of the law laid down by the Apex Court discussed hereinabove, the Court is inclined to grant indulgence to the petitioner. The writ petition is disposed of with a direction to the respondents to consider the case of the petitioner for grant of senior scale on account of his service from 28.8.1979 to 31.1.2009 and grant benefit of pay enhancement on account of time bound promotion senior scale or ACP. Necessary corrective decision may be taken by the respondents with all consequential monetary benefits within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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