

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5121 of 2020

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Abhimanyu Prasad Saha, Son of Late Shiv Charan Saha, Resident of A-95,
Magistrate Colony, Ashiyana Nagar, P.S. Rajiv Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary-cum-Appellate Authority, General Administration Department-cum-Appellate Authority, Service Complaint Redressal, Government of Bihar, Patna.
4. The Service Complaint Redressal Officer, General Administration Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5134 of 2020

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Kamdev Prasad Karn, Son of Late Tej Narayan Karn, Resident of 2,
Magistrate Colony, Opposite Aprajita Apartment, Khajpura, P.S. Shastri
Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary-Cum-Appellate Authority, General Administration Department-Cum-Appellate Authority, Service Complaint Redressal, Government of Bihar, Patna.
4. The Service Complaint Redressal Officer, General Administration Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 5121 of 2020)

For the Petitioner/s : Mr. Jagannath Singh, Advocate

For the Respondent/s : Mr. Anil Kumar, AC to SC-8

(In Civil Writ Jurisdiction Case No. 5134 of 2020)



For the Petitioner/s : Mr.Jagnnath Singh, Advocate
For the Respondent/s : Ms. Divya, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 12-11-2020 Heard Mr. Jagnnath Singh, learned counsel for the petitioners, Mr. Anil Kumar, AC to SC-8 and Ms. Divya, AC to AAG-3.

2. The petitioners have approached this Court for quashing the order dated 14.11.2019 and 09.01.2020, as contained in Annexures- 10 and 11 in C.W.J.C. No. 5121 of 2020 and Annexures-9 and 10 in C.W.J.C. No. 5134 of 2020.

3. The petitioners have retired on 31.05.2004 and 31.07.2004 respectively.

4. Counsel appearing on behalf of the State submits that after 1999, the meeting of Departmental Promotion Committee was held for the first time on 09.09.2004, 10.09.2004 and also on 13.09.2004. The petitioners, who were not within the zone of consideration in 1999, were not granted promotion in subsequent years while they were in service. However, after retirement their case could not be considered for grant of promotion in the meeting dated 09.09.2004, 10.09.2004 and also on 13.09.2004. The petitioner of C.W.J.C. No. 5121 of 2020 retired on 31.07.2004 and petitioner of C.W.J.C. No. 5134 of 2020 retired on 31.05.2004 and as such their case was not



considered for grant of promotion.

5. Mr. Jagannath Singh, learned counsel for the petitioners has cited example of Ashok Kumar Rai and Shashi Bhushan Prasad Singh, who were granted promotion notionally after retirement and prayed that the case of the petitioners may be considered on the same line and the petitioners should also be granted notional promotion.

6. Attempt has been made on behalf of the respondents to distinguish the case of the Ashok Kumar Rai and Shashi Bhushan Prasad Singh on the ground that their cases remained pending before the Departmental Promotion Committee in 1999 and as such they were granted notional promotion after retirement and after 1999, no one junior to the petitioners was granted cadre promotion and as such the petitioners are not entitled to grant of notional promotion. It has been emphatically argued that no meeting of Departmental Promotion Committee was held in between 1999 to 31.07.2004 when petitioner of C.W.J.C. No. 5121 of 2020 retired and petitioner of C.W.J.C. No. 5134 of 2020 retired on 31.05.2004 and as such their case was not considered. It is the stand of the respondents that on account of 85th constitutional amendment and pendency of cadre bifurcation on State bifurcation, the



respondents were not able to convene the meeting of D.P.C. and as such the meeting of DPC was not held.

7. Learned counsel for the petitioners submits that the petitioners cannot be made to suffer on account of failure of respondents to convene the meeting of Departmental Promotion Committee, since no meeting of Departmental Promotion Committee was held in between 1999 to September, 2004 and in the meanwhile the petitioners superannuated. Now the petitioners cannot be arbitrarily told that since I failed to convene the meeting and therefore your case was not considered for grant of notional promotion, whereas in other cases, notional promotion were available.

8. Considering the aforesaid, the Court is constrained to hold that the respondents cannot take advantage of their own failure in convening the meeting of Departmental Promotion Committee for one or the other reason and deny the benefit of promotion to these petitioners.

9. Hon'ble Mr. Justice Chagla, Chief Justice in the case of **All India Groundnut Syndicate Vs. Commissioner of Income Tax**, reported in **AIR 1954 Bom. 232**, has occasion to discuss the law and equity in similar facts situation. The relevant part of the judgment is quoted herein below:

"But the most surprising contention is put forward by the



Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person we take it that the Income-tax Department is included in that definition can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

10. Similar view was expressed by the Apex Court in the judgment of the Apex Court in the case of **State of Maharashtra Vs. Jagannath Achyut Karandikar**, reported in, **AIR 1989 SC 1133**. The Court is of the considered view that the petitioners cannot be made to suffer on account of failure of the respondents to convene the meeting of DPC while the petitioners were in service for five long years and only after the retirement of the petitioners on 31.05.2004 and 31.07.2004 respectively the meeting of DPC was convened and the legitimate claim of the petitioners was denied.

11. Under the aforesaid circumstances and for the ends of justice, the Court is constrained to quash the order as contained in Annexures- 9 and 10 in C.W.J.C. No. 5121 of 2020 and Annexures-10 and 11 in C.W.J.C. No. 5134 of 2020. The respondents are hereby directed to consider and grant notional promotion and all consequential benefits of notional promotion



to the petitioners within a period of three months from the date of receipt/production of a copy of this order.

12. With the aforesaid, the writ applications stand disposed of.

(Anil Kumar Upadhyay, J)

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