

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19558 of 2016

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Anita Devi wife of Late Vinod Kumar, resident of Mohalla- Ratanpura
Bardari, P.S.- Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Labour Commissioner, Bihar, Patna.
3. The Joint Labour Commissioner, Bihar, Patna.
4. The Deputy Labour Commissioner, Patna Division Patna.
5. The Labour Superintendent, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bijay Shankar Choubey
For the Respondent/s : Mr.Chitranjan Sinhapaag2

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 17-05-2021 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

2. Grievance of the petitioner in the present application is that petitioner became eligible for in cadre promotion in 2012 but the case of the petitioner was not considered by the respondents for promotion and as such the petitioner filed writ application in 2016. We are in 2021. The present application remained pending for five years.

3. In this case counter affidavit as well as supplementary counter affidavit has been filed only when the Court directed for stoppage of salary of Labour Commissioner, Bihar, Patna.



5. In the counter affidavit stand has been taken by the respondents that because DPC meeting was stayed by General Administrative Department and during the stay of DPC the petitioner became over age. She crossed 45 years maximum age which prescribed for grant in service promotion. The pleas of the respondents that the petitioner's case is out of consideration zone is patently absurd. The respondents have not taken any reasonable ground in excluding the case of the petitioner for grant of promotion.

6. Since the petitioner became eligible in 2012 on completion of 5 years service it was obligation of the respondents to consider the case of the petitioner for promotion but for the lapse of the respondents in convening the DPC meeting and failure on the part of the respondents to convene meeting of DPC the case of the petitioner was not considered. The petitioner became overage and she crossed 45 years of age for grant of in service promotion. Since there is failure on the part of the respondents in convening DPC meeting after acquiring eligibility by the petitioner for grant of promotion the petitioner cannot denied consideration of her case for promotion on the ground that she has become overage.

7. In this case, the law in this regard is well settled.



The judgment the Hon'ble Chief Justice Chagala of Bombay High Court in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax** reported in **AIR 1954 Bom.232** is settler on the point that the petitioner cannot be made to suffer on account of lapse of the respondents. The respondents were under obligation to consider the case of the petitioner. Similar view was expressed by the Apex Court in the case reported in **AIR 1989 SC 1133**.

8. As indicated in the judgment of the Apex Court reported in AIR 1989 SC 1133 and failure on the part of the respondents for not holding DPC meeting cannot be a ground to deny promotion to the petitioner holding that the petitioner has become overage on account of failure in holding DPC meeting since 2012 when the petitioner has become eligible for grant of promotion on completion of five years service as per service rule accordingly, the writ petition is allowed.

9. The respondents are directed to reconsider the case of the petitioner after condoning the age of the petitioner.

10. Entire excersie in this regard for consideration and grant of promotion to the petitioner with consequential benefit shall be considered by the respondents within a maximum period of four months from the date of receipt/production of a



copy of this order.

11. With the aforesaid, the writ application stands
allowed and disposed of.

(Anil Kumar Upadhyay, J)

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