

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5018 of 2020

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Kanchan Kumar Son of Sri Nitya Nand Devanshu, resident of Near Hanuman Mandir, Arya Nagar, Kathari Bagh, P.O. Chapra, P.S. Chapra Town, District-Saran at Chapra, presently posted as an Assistant Teacher, Nationalized Middle School, Patedha, Block- Nagra, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Saran Division, Chapra.
5. The District Education Officer, Saran at Chapra, District- Saran at Chapra,
6. The District Program Officer (Establishment), Saran at Chapra, District-Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.
For the Respondent/s : Mr.Madanjeet Kumar (Gp20)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 25-11-2022 Heard the parties through virtual mode.

The petitioner prays for seeking promotion to the post of Headmaster on the ground that person junior to him has been promoted.

This Court finds that the petitioner has not impleaded any one as a party to the writ petition claiming for a better right. The Court will have to examine whether person junior to him has been junior to him or not unless there is no one.

Keeping in view the law laid down by the Apex Court



in the case of State of Rajasthan Vrs. Ucchab Lal Chhanwal reported in (2014) 1 SCC 144.

Learned counsel for the petitioner submits that there is no requirement for impleading as there are vacancy. However, keeping in view the law laid down as above wherein the Supreme Court has held as under :

“10 : Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted vide order dated 20.8.1997. They have not been arrayed as parties. Needless to emphasize, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him.

14 : In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons



junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponement, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the conclusion of the High Court relating the circular is concerned, it is unexceptionable and we concur with the same.”

The contention raised by the counsel for the petitioner is not acceptable. The writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

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