

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.10 of 2022**

**In**

**Civil Writ Jurisdiction Case No.5121 of 2020**

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
  2. The Additional Chief Secretary, cum Appellate Authority, General Administration Department cum Appellate Authority, Service Complaint Redressal, Government of Bihar, Patna.
  3. The Service Complaint Redressal Officer, General Administration Department, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

1. Abhimanyu Prasad Saha son of Late Shiv Charan Saha resident of A- 95, Magistrate Colony, Ashiyana Nagar, P.S.- Rajiv Nagar, District- Patna
2. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

with

**Letters Patent Appeal No. 16 of 2022**

**In**

**Civil Writ Jurisdiction Case No.5134 of 2020**

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
  2. The Additional Chief Secretary, Cum Appellate Authority, General Administration Department Cum Appellate Authority, Service Complaint Redressal, Government of Bihar, Patna.
  3. The Service Complaint Redressal Officer, Genral Administration Department, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

1. Kamdeo Prasad Karn Son of Late Tej Narayan Karn, Resident of 2, Magistrate Colony, Opposite Aprajita Apartment, Khajpura, P.S.- Shashtrinagar, Dist-Patna.
2. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s



**Appearance :**

(In Letters Patent Appeal No. 10 of 2022)

For the Appellant/s : Mr.Sanjay Kumar Ghosarvey (A.C. to A.A.G.3)

For the Respondent/s : Mr.Jagnnath Singh, Advocate

(In Letters Patent Appeal No. 16 of 2022)

For the Appellant/s : Mr.Sanjay Kumar Ghosarvey (A.C. to A.A.G.3)

For the Respondent/s : Mr.Jagnnath Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 09-07-2024**

The above appeals are from the common order, which directed the State Government to consider the respondents; who were the writ petitioners, for promotion and give them consequential benefits notionally.

2. Admittedly, after 1999, the Departmental Promotion Committees (DPCs) were not held and this deprived the persons who were continuing in employment from being considered for promotion. The DPCs were conducted on 09.09.2004, 10.09.2004 and 13.09.2004, before which the writ petitioners retired from service; respectively on 31.05.2004 and 31.07.2004. The DPCs held in the month of September, 2004 did not consider the case of the petitioners, since they had already retired.

3. The learned Single Judge found that it was the total failure of the Government to conduct Departmental Promotion Committee and in such circumstance, the petitioners cannot be



made to suffer on account of failure of the respondents to convene the DPC. However, we are of the opinion that the claim no longer survives at this distance of time from their retirement.

4. The petitioners while in service, were aware of the fact that DPCs were not convened from 1999 onwards. It was possible for them to approach this Court seeking a direction to the State to conduct the DPCs. It is relevant that they never approached the authorities or this Court with a prayer to conduct the DPCs and grant them promotion while they were in service. More significant is the fact that both these persons retired in May and July 2004 and the DPCs were conducted in the month of September; they did not raise any claim for consideration of their promotions at that point of time also. Admittedly, it was in 2019, that a representation was made for consideration of promotion while in service; 15 years after their retirement.

5. We cannot but find that this was not a fit case where extraordinary discretionary remedy could have been exercised by the learned Single Judge. The learned Counsel submits that only notional promotion was directed. Even if it is so, such notional promotion can be granted only on the basis of the DPCs, which, at this point of time, would have to examine the services of the petitioners *qua* the other persons in the zone



of consideration at that time when they asserted that they were eligible for promotion; which is prior to 2004.

6. We find the holding of the DPCs itself to be not practical at this distance of time. The writ petitioners also have not raised the claim within a reasonable period of the denial of promotion or at least immediately after retirement.

7. We are constrained to interfere with the judgment of the learned Single Judge and we do so. We set aside the same and allow the appeals.

8. Interlocutory application(s), if any, shall also stand dismissed.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

Sujit/-

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