

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11587 of 2024

1. Arun Kumar Son of Alakhdeo Singh, Resident of West Patel Nagar, P.O.- Shastrinagar, P.S.- Shastrinagar, District- Patna, Bihar.
2. Upendra Kumar, Son of Sidheshwar Prasad, Resident of New Area P.O.- Nawada P.S.- Nawada, District- Nawada, Bihar.
3. Hare Ram Singh, Son of Mahendra Singh, Resident of Babhangama, P.O.- Babhangama, P.S.- Birpur, District- Begusarai, Bihar.
4. Sanjay Kumar, Son of Bacchu Singh, Resident of Malikpur, P.O.- Nemdarganj, P.S.- Nemdarganj, District- Nawada, Bihar.
5. Abhimanyu Kumar, Son of Upendra Prasad Singh, Resident of Sarvoday Nagar, P.O.- Mirzapur Banduar, P.S.- Begusarai, District- Begusarai, Bihar- 851129.
6. Ajay Kumar Singh, Son of Paraspatti Nath Singh, Resident of Sabalpur, P.O.- Rajgir, P.S.- Rajgir, District- Nalanda, Bihar.
7. Rajesh Kumar, Son of Dev Nath Singh, Resident of Khamhar, P.O.- Khamhar, P.S.- Begusarai Muffassil, District- Begusarai, Bihar.
8. Umakant, Son of Parasidh Narayan Singh, Resident of Gonawa, P.O.- Gondapur, P.S.- Nawada, District- Nawada, Bihar.
9. Rajesh Kumar, Son of Suresh Prasad Singh, Resident of Dumrawa, P.O.- Dumrawa, P.S.- Pakri Warawan, District- Nawada, Bihar.
10. Punit Kumar, Son of Satyadev Singh, Resident of Lalit Nagar, P.O.- Mohan Aghu, P.S.- Begusarai Muffassil, District- Begusarai, Bihar.
11. Nagendra Kumar, Son of Rampadarth Chaudhary, Resident of Damuchak, P.O.- Ramana, P.S. Kagi Mohmadpur, District- Muzaffarpur Bihar.
12. Shahshi Kumar Dev, Son of Suresh Pd. Dev, Resident of Panjabi Colony, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Bihar.
13. Abhay Kumar, Son of Arvind Prasad Singh, Resident of Ramdiri, P.O.- Ramdiri, P.S.- Matihani, District- Begusarai, Bihar.
14. Anil Kumar, Son of Ram Naresh Singh, Resident of Bagwara, P.O.- Suhird Nagar, P.S.- Begusarai Muffassil, District- Begusarai, Bihar.
15. Dharmendra Kumar Gupta, Son of Ram Swarath Sahu, Resident of Madarpur, P.O.- Lalbag, P.S.- Laheriya Sarai, District- Darbhanga, Bihar.
16. Arvind Kumar Singh, Son of Dayal Sharan Singh, Resident of Navin Nagar, P.O.- Nawada, P.S.- Nawada, District- Nawada, Bihar.
17. Subhash Prasad, Son of Raghunandan Singh, Resident of Bhadaur, P.O.- Sabhari, P.S.- Nardiganj, District- Nawada, Bihar.
18. Nirbhay Kumar Mishra, Son of Ganesh Prasad Mishra, Resident of Shashtri Colony, P.O.- Jamu, P.S.- Jamui, District- Jamui, Bihar.
19. Anil Kumar, Son of Ramashraya Sharma, Resident of Imaliya, P.O.- Pinjora, P.S.- Kako, District- Jahanabad, Bihar.
20. Ajit Kumar, Son of Chandradev Singh, Resident of Rudauli, P.O.- Rudauli, P.S.- Bachhwara, District- Begusarai, Bihar.



- 21. Amrendra, Son of Ramanandan Singh, Resident of Hisua, P.O.- Hisua, P.S.- Hisua, District- Nawada, Bihar.
- 22. Arvind Kumar, Son of Ratan Prasad Singh, Resident of Lakhi Bag, P.O.- Buniyadganj, P.S.- Gaya Muffassil, District- Gaya, Bihar.
- 23. Afjal Hussain, Son of Md. Suleman Miyan, Resident of Mohanpur, P.O.- Mohanpur, P.S.- Begusarai Muffassil, District- Begusarai, Bihar.
- 24. Shrawan Kumar, Son of Harihar Prasad, Resident of Professor Colony, P.O.- Dumri, P.S.- Naw Kothi, District- Begusarai, Bihar.
- 25. Vijay Kumar Singh, Son of Devendra Pd. Singh, Resident of Ward- 13, P.O.- Samartha, P.S.- Bibhutipur, District- Samastipur, Bihar.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Secretary, Agriculture Department, Government of Bihar, Patna.
- 2. The Secretary, Agriculture Department, Government of Bihar, Patna.
- 3. The Secretary, General Administrative Department, Government of Bihar, Patna.
- 4. The Agriculture Director, Agriculture Department, Government of Bihar, Patna.
- 5. The Joint Secretary, Agriculture Department, Government of Bihar, Patna.
- 6. The Deputy Secretary, Agriculture Department, Government of Bihar, Patna.
- 7. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Kanishka Shankar, Advocate
For the State	:	Mr. U.S.S. Singh, GP-19 Mrs. Shobha Choubey, AC to GP-19
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-11-2024

Heard Mr. Lalit Kishore, learned Senior Counsel
assisted by Mr. Kanishka Shankar, learned counsel appearing on
behalf of the petitioners; Mr. U.S.S. Singh, learned GP-19
assisted by Mrs. Shobha Choubey, learned AC to GP-19
appearing on behalf of the State and Mr. Sanjay Pandey, learned



counsel along with Mr. Nishant Kumar Jha, learned counsel for the Bihar Public Service Commission.

2. The petitioners in paragraph no. 1 of the present writ petition have sought *inter alia*, following relief(s), which is reproduced hereinafter:

"i) For issuance of order(s), directions(s), writ(s) particularly in the nature of the writ of mandamus directing the Respondent authorities to consider the Petitioner's case for promotion from Bihar Agricultural Subordinate Service Category-I (Agro) Cadre to 181 sanctioned post of Bihar Agricultural Service Category-I (Agro) Cadre on the basis of seniority cum merit since the same has not been considered which is in violation of fundamental and statutory rights of the Petitioners, and, if found fit, grant them the said promotion and all consequential benefits since the due date.

ii) For any other relief or reliefs for which the Petitioners may be deemed entitled to in the facts and circumstances of the case."

3. Mr. Lalit Kishore, learned Senior Counsel in background of the fact that the regular promotion is not being given to the employees of the State Government in light of the stay granted by the Apex Court in ***S.L.P. No. 29770 of 2015 (The State of Bihar vs. Sushil Kumar Singh & Ors.)*** and no stay in ***S.L.P. No. 8121 of 2024 (Ashok Kumar Chaudhary & Ors. vs. the State of Bihar & Ors.)***, of "*Temporary Substitute Executive Arrangement Rules, 2023*" (hereinafter referred to as the 'Rules, 2023'), which have been framed with an object to run the Government's day to day administrative and developmental work for which, in terms of Rule, 2023, the efficient employees



are being given *ad hoc*/officiating promotion. Learned Senior Counsel further submits that the State Government has discriminated the petitioners, insofar as, the employees of Agriculture Department is concerned, by not giving them equal treatment to consider for the promotion/*ad-hoc*, who have been left stagnated for long period of time and deserve to be considered for due *ad-hoc* promotion in accordance with Rules, 2023. He further clarifies that Rule, 2023 has not been interfered in any manner, either by the Division Bench of this Court or by the Apex Court in ***S.L.P. No. 8121 of 2024 (Ashok Kumar Chaudhary & Ors. vs. the State of Bihar & Ors.)***.

4. Learned Senior Counsel referring to paragraph no. 7 of the counter affidavit filed on behalf of the respondents no. 1,2,4,5 and 6, submits that the same are misconceived statement in view of the fact that the petitioners are seeking due promotion on the vacant posts as per their eligibility in accordance with Rule 5 (1) of the Bihar Agricultural Service Category-1 (Agro) Cadre (Appointment, Promotion, and Service Conditions) Rules, 2014 as amended up-to-date. Since the petitioners fulfill all the criteria to be appointed in Bihar Agriculture Service, category-1 (Agronomy), the same should be considered by the authority concerned.



5. *Per contra*, learned counsel appearing on behalf of the respondents submits that the petitioners belong to the Bihar Agriculture Sub-ordinate Services (Category I) but have filed the present writ petition for being promoted into a different cadre, which is governed by different rules and regulations.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioners, after their appointment, are still continuing on the post of Block Agriculture Officer and have become entitled for being considered for their promotion as per the provision of the Bihar Agriculture Service Category-1 (Agro) (Annexure-P/4 to the writ petition), which is effective from the date, it came into effect i.e. 14.10.2014. The action of the department cannot be said to be justified in view of the fact that law is well settled that promotion is incidence of service and keeping the employee stagnated even though they have been granted financial progression, would not come in a way to grant them due promotion.

8. The Hon'ble Supreme Court in the case of *State of Punjab V. Arun Kumar Aggarwal* reported in (2007) 10 SCC 402, has held that asking an officer holding substantively lower



post to discharge the duties of higher post cannot be treated as promotion and such person continues to hold the substantive lower post and only discharges the duties of higher post essentially as stop gap arrangement; that no right accrues from the same. Similarly, in the case of *State of Harayna v. S.M. Sharma* reported in *1993 Supp (3) SCC 252*, the judgment of the High Court reading the order of giving current duty charge as an order of promotion was set aside. Yet again in the case of *Sreedam Chandra Ghosh V. State of Assam* reported in *(1996) 10 SCC 567*, the Apex Court has held that officiation in a higher post confers no right to the post.

9. By way of caution of remark while exercising to give *ad hoc* promotion, I find it proper to reproduce the observation made by the Apex Court in the case of *R.K. Tandon vs. State of U.P.* reported in *(1996) 10 SCC 247*, must be duly adhered with, which *inter alia* is as follows:

"10. The fourth circumstance that was brought to our notice is that some of the candidates appear to have gone to the court and obtained directions on the ground that they were not parties to the orders passed by this Court and that, therefore, they seek to claim rights independently. This order would cover all the cases and would apply to all the candidates who are concerned in this service and the Government would determine their inter se seniority in accordance with these directions within four months from today. Before parting with the case, we are pained to notice that the Government has resorted to ad hocism which resulted in distortion in the service and heartburning, manipulation and corruption. We hope and trust that the Government would put a stop to the ad hoc appointments that has become breeding ground for corruption and nepotism so as to inculcate discipline in services." (emphasis supplied)



10. The Additional Chief Secretary, Agriculture Department, Government of Bihar is directed to exercise as per the provision of *Temporary Substitute Executive Arrangement Rules, 2023* and as per the mandate of Bihar Agriculture Service Category-1 (Agro) in consultation with the Additional Chief Secretary, General Administration Department, Government of Bihar, for giving due promotion on *ad hoc* basis to the petitioners on the basis of their individual eligibility, without delay, in view of the fact that altogether 181 different posts of Bihar Agricultural Service Category-1 (Agro) are still vacant.

11. With aforesaid observations/directions, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.12.2024
Transmission Date	N/A

