

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18896 of 2024

1. Rakesh Kumar Guddu Babu Son of Rajeshwar Mahto, Resident of Village-Ujiyarpur, P.O- Ujiyarpur Ward no.4, P.S- Ujiyarpur, District- Samastipur. Date of Joining-16/01/14, at present posted as Child Protection Officer, District Child Protection Unit, District-Patna.
2. Manoj Kumar Son of Shri Bangali Prasad, Resident of Village-Sarika, P.O- Lodhipur, P.S-Sheikhpura, District- Sheikhpura. Date of Joining-31/01/14, at present posted as Child Protection Officer, Birhad Ashray Grih Office, District-Jamui.
3. Amarjeet Kumar Son of Late Nawal Kishor Prasad, Resident of Village-Mahanandpur, P.O-Panhesa, P.S- Sheikhopursaraj, District- Sheikhpura. Date of Joining-20/01/2014, at present posted as Child Protection Officer, District Child Protection Unit, District- Madhepura.
4. Bhaskar Kashyap Son of Krishna Nand Jha, Resident of Village and P.O- Anandpura, P.S-Udakishunganj, District- Madhepura. Date of Joining-21/01/14, at present posted as Child Protection Officer, District Child Protection Unit, District- Supaul.
5. Chandradeep Kumar Son of Late Kusheshwar Ray, Resident of Village-Dainy Pagra, P.O- Pagra, P.S- Dalsinghsarai. Date of Joining-20/02/14, at present posted as Child Protection Officer, District Child Protection Unit, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Additional Chief Secretary, General Administrative Department, Government of Bihar, Patna.
4. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
5. The Director, Social Welfare Directorate, Government of Bihar, Patna.
6. Joint Director, Social Welfare Directorate, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Roy, SC-13
		Mr. Bijay Bhushan Prasad, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-12-2024

Heard Mr. Dinu Kumar, learned counsel appearing on



behalf of the petitioners and Mr. Jitendra Kumar Roy, learned SC-13 along with Mr. Bijay Bhushan Prasad, learned AC to SC-13 for the respondents.

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 quashing the office order vide memo no. 2248 dated 12/11/24 issued under the signature of Joint Director, Social Welfare Department, Government of Bihar, Patna as contained in Annexure P/10, by which the petitioners have been communicated that the promotion of the petitioners to the post of Assistant Director from District Child Protection Unit is not being considered on the reason the cadre posting brochure (sopan) does not clarify the promotion of Child Protection Officer, Superintendent, Deputy Superintendent, Accountant-cum-Storekeeper, Housekeeper-cum-clerk and Bench Clerk.

ii. For issuance of writ in the nature of mandamus for commanding the Additional Chief Secretary, Social Welfare Department, Government of Bihar, Patna respondent no.2 to consider the case of the petitioner for promotion to the post of Assistant Director from District Child Protection Unit as per Rule 5(1) of Bihar Child Protection Service (recruitment and conditions of service) Rules, 2014, published in the official gazette on 19/05/14 to fill up 25% post of the post of Assistant Director i.e., 11 vacant posts out of 44 sanctioned posts from District Child Protection Unit by way of promotion.

iii. For commanding the state respondents to take steps in cancelling the posting of persons from different cadre to the post of Assistant Director from District Child Protection Unit which are meant for Child Protection Officer by way of promotion.

iv. Also for necessary relief/ reliefs, order/orders, direction/directions for which the petitioners are entitled in the eye of law."

3. Mr. Dinu Kumar, learned 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.)***.

4. Learned counsel informs that the "*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.)***.

5. Learned counsel next contended that the petitioners are seeking due promotion on the vacant posts as per their



eligibility in accordance with Rule 5 (1) and Rule 8 of the Bihar Child Protection Service (Recruitment and Condition of Service) Rules, 2014 as amended up-to-date. Since the petitioners fulfill all the criteria to be appointed in Bihar Child Protection Service (Recruitment and Conditions of Service) Rules, 2014, the same should be considered by the authority concerned.

6. *Per contra*, learned counsel appearing on behalf of the respondents submits that the petitioners have filed the present writ petition for being promoted into a different cadre, which is governed by different rules and regulations.

7. Heard the parties.

8. 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 Child Protection Service (Recruitment and Condition of Service) Rules, 2014 (Annexure-P/1 to the writ petition), which is effective from the date, it came into effect i.e. 04.06.2014. 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.

9. 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.

10. 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)

11. 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 Child Protection Service (Recruitment and Condition of Service) Rules, 2014 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 11 posts of Assistant Director are still vacant.

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

(Purnendu Singh, J)

Niraj/-

FR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.12.2024
Transmission Date	N/A

