

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2070 of 2021**

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Surya Narayan Paswan Son of Amar Nath Paswan Resident of Village-  
Nimchak, P.S.- Barh, P.O.- Bahrawan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Environment and Forest Department, Government of Bihar, Patna.
2. The Secretary, Environment and Forest Department, Government of Bihar, Patna.
3. The Principal Chief Conservator of Forest, Bihar, Patna.
4. The Regional Chief Conservator of Forest, Patna Region, Patna.
5. The Conservator of Forest, Gaya Circle, Gaya.
6. The Divisional Forest Officer, Gaya Forest Division, Gaya.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|----------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Ram Hriday Prasad, Advocate<br>Mr. Marut Kumari, Advocate  |
| For the Respondent/s | : | Mr. Anand Pd. Singh, SC-15<br>Mr. Deepika Sharma, AC to SC- 15 |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 08-07-2025**

Heard the parties.

2. The petitioner is aggrieved with the order of the Principal Chief Conservator of Forest, Bihar, Patna dated 28.01.2020, whereby the prayer of the petitioner for promotion to the post of Forest Range Officer came to be rejected. The petitioner further prays to confirm his services on the post of Forester after completion of 3 years and extend all the benefits, including the grant of promotion on the post of Range Officer with effect from the date, his juniors were promoted on the



similar post.

3. This is the second round of litigation as earlier for redressal of the grievance, the petitioner had moved this Court in C.W.J.C. No. 13192 of 2019, which was disposed of by a Bench of this Court on 03.07.2019 with a direction to the petitioner to make a representation to the Principal Chief Conservator of Forest, Bihar, Patna, who was further directed to dispose of the representation of the petitioner by a reasoned order. In pursuant to the order of this Court, a detailed representation was filed. However, it did not find any favour and in substance, the claim of the petitioner for promotion came to be rejected on account of the services of the petitioner being not confirmed. It has also been averred in the impugned order that during the service period, the petitioner was subjected to departmental proceeding and he was also on unauthorized leave for a certain period and there is a Vigilance Case, bearing Vigilance P.S. Case no. 19 of 2005, which is still pending. On the reasons aforementioned, the services of the petitioner could not be confirmed, which resulted into non-extending the benefit of promotion.

4. Mr. Ram Hriday Prasad, learned Advocate for the petitioner drew the attention of this Court to letter as



contained in Memo No. 450 dated 02.06.1973 and contended that non-confirmation of the services of the petitioner, even after completion of three years of regular service clearly suggests that there is laches on the part of the respondent authorities, moreover, the State has taken a conscious decision that any temporary employee, who has been working for more than three years regularly, their cases shall be considered for confirmation.

5. On the last occasion, when this Court has taken up the present writ petition, the learned Advocate for the State was requested to assist this Court on the point of law, being an officer of the Court.

6. Ms. Deepika Sharma, learned Advocate for the State after narrating the facts urged that the issue raised before this Court was duly considered in the case of **Deo Narayan Jha Vs. The State of Bihar & Ors.**, reported in, **1996 (1) BLJ 286**, wherein this Court placing reliance upon a Constitution Bench decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Dharam Singh**, reported in, **AIR 1968 SC 1210** has emphasized that where the service would fix certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue on that post after the



completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue on that post as a probationer by implication rather the probation period shall be deemed to be confirmed.

7. Further reliance has been placed on a Bench decision of this Court in the case of **Vijaya Upadhyaya Vs. The State of Bihar & Ors.**, reported in **2010 (1) PLJR 899** wherein the Court placing reliance upon the previous judgment of this Court in the case of **Awadhesh Singh Vs. State of Bihar & Ors.**, reported in **2004 (3) BLJ 661** and further in the case of **Dr. Paras Nath Prasad Vs. State of Bihar**, reported in, **1990 (2) PLJR 248** has held that Rule 58 of the Bihar Service Code cannot stand in the way of an employee getting monetary benefits if he was denied promotion from due date for no fault of his part. In case where promotion was not granted because of pendency of departmental proceeding/suspension/criminal case or matter is pending in sealed cover, on completion of such proceeding and promotion from retrospective date a person is entitled for arrears of salary on such retrospective promotion although he has not worked against the higher post.

8. Reliance has also been placed on a Bench decision of this Court in **Siyaram Singh Vs. The State of Bihar**



**& Ors**, reported in **2012 (2) PLJR 181** wherein the Court has held that if on account of inadvertence an employee is denied promotion, irrespective of the fact that the juniors have been accorded promotion and later on if the benefit was granted to him, but only with effect from the date of joining to the post the same would be unsustainable and in fact the employee ought to have been given the benefit with effect from the date the juniors have been accorded the benefit of promotion. To deny the benefit of financial benefits to the employee would insufficient as well as discrimination practice by the State.

9. Referring to the aforesaid legal proposition learned Advocate for the State further contended that the confirmation of the services of the employee ought to be considered by the concerned authorities after his completion of services for three or more years unless there is some cogent reason not to do so.

10. Coming to the case in hand, admittedly the petitioner was subjected to multiple departmental proceeding for unauthorized absence and he was awarded some minor punishment; subsequently all the period of absence were regularized and the currency of the punishment has already gone over much earlier.



11. Even accepting the aforesaid facts, if the petitioner has completed a reasonable period of time or served for more than substantive period, there had been no reason or occasion as to why his services has not been confirmed, once he has been allowed all the benefits of regular pay scale or other allowances/perks at par with other regular employees, except promotion. It is made clear that consideration for confirmation of service and/or for promotion are based upon different yardstick. There may be justifiable reason not to extend promotion, but once an employee has been allowed to discharge services for more than 34 years and attained the age of superannuation, it does stand to any plausible reason why his service could not be confirmed.

12. Now the only impediment coming in way to the petitioner is pending Vigilance case, bearing no. 19/2005. The aforenoted criminal case is pending since twenty years and in the meanwhile other juniors to the petitioner have been extended promotion; the respondents are duty bound to consider as to whether allegation levelled in the case relates to in discharge of his duty and/or any charge report has been submitted. In case, both the contingent are not available, the employee cannot be deprived from consideration for promotion



*ad infinitum.*

13. In view of the facts and the legal proposition discussed hereinabove, the order impugned dated 28.01.2020, as contained in Annexure-7 stands set aside; let the claim of the petitioner for promotion be considered by the departmental screening committee in its next meeting and take a decision in accordance with law.

14. Suffice it to observe that in case the claim of the petitioner finds favour, necessary order of promotion along with all the consequential benefits shall be accorded to him with effect from the date when the juniors to the petitioner have been accorded the promotion preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

15. The writ petition stands allowed to the extent indicated hereinabove.

**(Harish Kumar, J)**

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