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**(1995) 02 PAT CK 0044**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2223 of 1989 (R)**

Bimlesh Chandra Ojha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 03-02-1995

**Acts Referred:**

**Citation :** (1995) 02 PAT CK 0044

**Final Decision :** Dismissed

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### Judgement

R.N. Sahay, J.—The petitioners have moved this Court for quashing the notification issued on 25.7.1989 (Annexure-2) whereby respondent Nos. 6 to 68 have been promoted to Gazetted Class II senior post in the pay scale of Rs. 1000-1820/- on the ground that the petitioners who are holding Gazetted post were denied just promotion in breach of Bihar Industries Service Cadre Rules 1987 framed under Article 309 of the Constitution of India.

2. The relevant facts may now be noted. This is admitted that the petitioners were initially appointed as Assistant Superintendent in the pay scale of Rs. 335/- to Rs. 555/-. In due course they were promoted to Class II Junior post in the pay scale of Rs. 880-1510/-. It is also admitted that the respondents are working in Non-Gazetted post though drawing better pay than the petitioners.

3. The learned Counsel for the petitioner has contended that in terms of Rule 11 of the Bihar Industries Service Cadres Rule 1987 promotion to any post shall be made from among the officers holding the post "just below". The Rules further provide that the promotion shall be made from the joint cadre on the basis of seniority-cum merit. Clause (c) of Rule 11 states that promotion to initial rank of the cadre shall normally be made from among the officers listed in Schedule IV appended to rules on the basis of seniority-cum merit. Rule 13 provides for necessary qualifying service for earning promotion to higher post as prescribed in Schedule III of the Rules. Under Schedule III Kalwadhi for promotion from scale of Rs. 1,000/-1,820/- to Rs. 1,350-2,000/- is five years. Schedule IV of the Rules gives list of officers in subordinate service who shall be

eligible for promotion to the post of Manager, Assistant Directors and Ors. in the scale of Rs. 1,000-1,820/-. The note to Schedule IV says that 8 posts of Assistant Director in pay scale of Rs. 1,000/-to 1,820/- shall be earmarked for the ministerial staff of the department. It is manifest from Schedule IV that the petitioners and respondent nos. 6 to 68 are eligible for promotion to the post of Manager, Asstt. Director provided they possess the qualifying service as prescribed in Schedule III.

4. The grievance of the petitioners is that respondents have been given double jump in the matter of promotion contrary to Rule 11 of the Rules as interpreted by the learned Single Judge of this Court in the case of Kapildeo Pd. Singh v. State of Bihar CWJC No. 5352 of 1987 disposed of on 26.6.91. The claim of the petitioners is based on this unreported decision. It is further case of the petitioners that some of the respondents namely, Lala Umesh Chandra, Uma Shankar Verma and Jawahar Lal Singh, respondent Nos. 45, 46 and 66 respectively are Accounts Graduate and that they were not qualified for promotion. On the other hand, the petitioners are B.Sc. Botany having higher certificate of Sericulture from the recognised institution but the petitioners have been ignored from consideration.

5. I get a different picture of controversy in the counter-affidavit filed by the respondents. According to the respondents their promotions were made according to Rule 11 of the Service Rules. It has been denied that the petitioners are senior to respondents Nos. 6 to 68 and they were eligible for consideration for promotion to the higher post to. It is stated that the petitioners having not completed 5 years service on the post just below at the time of scrutiny, their cases were not referred to the Bihar Public Service Commission. Annexure-B is the letter sent to the Commission fixing five years term for promotion.

6. Mr. Manjul Prasad, learned Counsel for the petitioners submitted that the respondents have no authority to modify the service rules by fixing five years term of promotion. This contention is not correct. The qualifying service is prescribed in the Schedule III itself and since the petitioners had not completed the qualifying service their cases could not be referred to Bihar Public Service Commission. In my opinion the petitioners had grievance they should have filed representation before the appropriate authority. This Court is exercise of power under Article 226 of the Constitution of India can not interfere with the impugned orders in view of the facts slated above.

7. Shri Manjul Prasad has relied the decision of the learned Single Judge referred to above. Learned Single Judge has held that Industrial Extension Officer (respondents before their promotion) were provided higher salary in the same cadre of Non-Gazetted and they were also granted selection Grade and Senior Selection Grade. The Extension Officers though not holding Non-Gazetted post could not be promoted as Manager, Asstt. Director and other similar post in the scale of Rs. 1,000 to 1,820/- Learned Single Judge was of the view that a non-Gazetted Officers can not be directly promoted in the rank of Manager or Asstt.

Director unless he is first promoted to Gazetted post. A Non-Gazetted officer must be promoted to Gazetted post then only can he be promoted to Manager or Asstt. Director. Learned Single Judge referred to the decision of Supreme Court in Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, . The Supreme Court had held in the case.

It is well recognised that promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. The provision of selection grade in the same category of posts is not a new thing. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.

In the case of Dayaram Asanand Gursahani Vs. State of Maharashtra and Others, it was held that:

The selection grade post is not a post to which promotion has to be made nor is there any efficiency bar rule attached to it.

8. Learned Single Judge therefore, held that in the facts and circumstances of the case it could not be held that grant of selection grade and senior selection grade to the Industrial Extension Officers will by itself make them eligible for promotion to the post of Manager/Asstt. Director and other similar posts in the scale of Rs. 1,000-1,820/- they remained in the non-gazetted category and before they became eligible for promotion to those posts they have first to be promoted to the gazetted category posts. Therefore, the inclusion of these categories of officers in Serial 5(B) and C of Schedule IV to the Rules must be held to be irrational and to that extent declared ultra vires.

9. Learned Single Judge was of the view that there was no rationality behind inclusion of those two categories of officers in Serial 5(a), (b) & (c) of Schedule IV of the Rules. It was based on no rationality and it is also opposed to Article 14 of the Constitution of India.

10. I am unable to appreciate the view of the learned Single Judge and I do not consider it necessary to refer this matter to a larger Bench because admittedly the petitioners were not eligible for promotion and hence they can not question the promotion of respondents nos. 6 to 68. The Learned Single Judge has declared the Schedule IV of the Rule ultra vires, without assigning any reason. The rule could not be declared ultra vires only because of certain observation of the Supreme Court in two cases defined to above which were no doubt in respect of other service Rules. In any view of the matter, the petitioners can not derive advantage of judgment since they were not been qualified for promotion at the relevant time. If they have completed qualifying service, I am sure that they will be considered for promotion in future vacancies.

11. This application is, therefore, dismissed but without costs.