

**(2012) 12 PAT CK 0075**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 16812 of 2012

Dr. Sachindra Kumar Sinha

APPELLANT

Vs

Rajendra Agricultural University

RESPONDENT

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**Date of Decision :** 05-12-2012

**Acts Referred:**

**Citation :** (2013) 2 BLJud 309

**Hon'ble Judges :** Mr. Navin Sinha, J.

**Bench :** Single Bench

**Advocate :** Mr. Gajanan Arun and Mr. Gajendra Kr. Singh, Advocates, for the Petitioners; Mr. Anil Kumar Upadhyay and Mr. Chandra Mohan Singh, Advocates, for the Respondents

**Final Decision :** Allowed

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## **Judgement**

Mr. Navin Sinha, J.(Oral)&mdash;Heard the learned Counsel for the petitioner and the respondent University.

2. The petitioner seeks promotion with consequential benefits to the post of Senior Scientist cum University Professor under the Career Advancement Scheme from 27.7.1999. He has superannuated on 31.7.2008.

3. Learned Counsel for the petitioner submits that his case was first considered in 2004. Promotion was wrongly denied to him. Under Statute 14.1(1)7(v) his case was to be reconsidered after a period of one year. Under Clause (vi) the Selection Committee was required to consider cases for promotion twice in June and December of a year. The Promotion Committee did not consider his case at all in the year 2005. The consideration commenced in June 2006 but was kept pending till October 2009. The Committee recommended him for promotion on 21.11.2009 identifying the due date for promotion as 27.7.1999. The respondents are wrongly interpreting the Statute. Even if promotion was denied for any reason in 2004 it does not take away his eligibility from 27.7.1999. The interpretation that he could be considered from 2009 only in view of the earlier

rejection and that he superannuated before that date is an absurd interpretation which the statute never intended.

4. He relies upon an order in LPA No. 689 of 2008 to contend that if promotion was not considered in due time for lapses attributable to the respondents and the incumbent is found fit from a retrospective date full monetary benefits have also to be given and the principle of "no work - no pay" has no application.

5. He next relies upon a Bench decision in CWJC No. 10643 of 2011 (Dr. Dharmendra Kumar Dwivedi v. Rajendra Agriculture University)/12115 of 2011/10666 of 2011/11054 of 2011 and 20320 of 2011 disposed on 16.3.2012 with regard to the same Statute and the very same controversy holding that promotion have to be given from due date of eligibility.

6. Counsel for the University submits that the petitioner was found unfit in the year 2004. Such persons who were to be reconsidered formed a class by themselves under the statute. In their cases the original date of eligibility for promotion was not relevant. They were to be granted the benefit if found fit from the date that the Selection Committee recommended their case. By the date of recommendation the petitioner had superannuated. The University has not discriminated against the petitioner as it follows a uniform yardstick for all persons similarly situated whose case for promotion has to be reconsidered pursuant to an earlier rejection. He lastly submits that the writ application is grossly belated. The petitioner superannuated on 31.7.2008 but has filed the writ application belatedly on 4.9.2012. The writ petition merits no consideration and is fit to be rejected both on merits and delay. It is lastly submitted that the proceedings of the Selection Committee are at best a recommendation and no formal orders for promotion have yet been issued.

7. No person has a fundamental right to promotion. The fundamental right is to be considered for promotion. This right necessarily carries within itself the right to be considered in time. A belated consideration is itself in violation of the fundamental right to be considered for promotion.

8. In (2010) 4 SCC 290 (Union of India v. Hemraj Singh Chauhan) it has been observed at paragraph 36 as follows:-

"36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

9. The promotions are regulated by statutory provisions and Statute. They have to be adhered to ensure timely consideration for promotion. It defies jurisprudence that a statutory authority can take the defence that it was not required to fulfil its statutory obligations unless and until someone who stood to benefit objected for non compliance. If that were to be so it would be vesting

totally arbitrary and uncanalised powers in the statutory authority over and above the statutory provisions rendering the law and application thereunder completely nugatory and futile. One who violates a statutory provision must bear the burden and obligation of the same in its entirety. It is a salutary provision that no person can take advantage of its own wrong. The contention on behalf of the University in the present case are completely counter to those well settled principle of law repeated by the Court time and again notwithstanding which the statutory authorities and bodies continue to raise the same objections negated by the Courts time without number.

10. The statutory provisions in question reads as follows:-

"(v) In case promotion of an incumbent is not recommended by the University Selection Committee for whatever the reasons may be, may again be considered for promotion after a period of one year has lapsed since his name was last considered. The promotion in such a case shall take effect from the date of the recommendation of the University's Selection Committee.

(vi) The University Selection Committee shall consider the cases of promotion at least twice in a year preferably in the month of June and December every year."

11. If the petitioner was not found fit for promotion in 2004, the University was under a statutory obligation to consider his case in the year 2005 by holding at least two sittings in the months of June and December. The counter affidavit is completely silent why the university evaded the responsibility for statutory compliance. If the process had commenced in 2006, there has to be a semblance of an explanation why the process has taken an inordinately long three years period for completion. The Court is of the considered opinion that a period of three years to complete consideration for promotion is so unreasonable and arbitrary so as to invoke the principle of "res ipsa loquitor" with regard to the conduct of the respondents. Even if what the respondents contend is accepted for a moment, if his case had been considered in 2005 he would have had the benefit of the promotion before superannuation.

12. The ineligibility of the petitioner in 2004 dis-entitled him to promotion from the due date of eligibility. It did not change his date of eligibility. The deferment of consideration to 2006 only delayed the issuance of formal orders and has no relevance to the due date of eligibility. Equally unacceptable is the submission that he is entitled to promotion from 2005, if there was error to hold annual consideration, for the same reasoning.

13. In the orders of the Court referred to above, similar arguments have been made and rejected. Emphasis has been laid on the failure of the respondents to hold Selection Committee Meeting in accordance with the Statute. Hostile discrimination with regard to similarly situated has also been noticed with regard to the due date of promotion. The limitation for filing any appeal has long expired and the Court is informed at the Bar that no appeal has been filed till date.

14. The University is a statutory body. It has an obligation to assist the Court in dispensation of justice and not to take an adversarial stand like a private litigant. Once the University has suffered the order in CWJC No. 10643 of 2011 and analogous cases, fairness required it to act accordingly.

15. The law with regard to retrospective promotion granted even after superannuation and the compulsion to grant full monetary benefits including arrears of salary, arrears of pension and revision of pension etc have all been noticed in 2012 (3) PLJR 55 (Madhusudan Prasad v. State of Bihar). It was yet another case where despite repeated pronouncements of the Court on the issue, objections repeatedly rejected by the Court, were nonetheless being reiterated frivolously. A conspectus of decision of this Court and the Supreme Court were noticed with direction to the authorities.

16. Once the petitioner had been found fit for promotion by the Selection Committee issuance of a formal notification is but a ministerial act. More so when the Court pronounces on the issue. The petitioner is held entitled for promotion to the post of Senior Scientist-cum-University Professor from 27.7.1999 as recommended by the Selection Committee. In accordance with the settled law cited by the counsel for the petitioner and also that noticed by the Court, the petitioner is held entitled to full monetary benefits of the same including arrears of salary and pension, revision of pension Payment order all to be complied with preferably within a maximum period of two months from the date of receipt and/or presentation of a copy of this order, failing which the petitioner shall be at liberty to claim interest, the liability for which shall necessarily be individual and not institutional.

17. The writ application stands allowed.