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**(2012) 02 PAT CK 0042**  
**In the Patna High Court**  
**Case No : CWJC No. 9938 of 2011**

Dr. Shafique Azam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 21-02-2012

**Acts Referred:**

**Citation :** (2012) 2 PLJR 508

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Raj Nandan Prasad, for the Appellant; Avnish Nandan Sinha, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ajay Kr. Tripathi, J.—Petitioner is working as a Professor in the Department of Anatomy, in the Government Tibbi College, Patna. He joined the institution as a Demonstrator in year 1991 and subsequently became a Lecturer. Petitioner acquired eligibility for promotion on the post of Reader and even Professor subsequently but since there was no decision taken by the concerned respondent for a long period of time, CWJC No. 3883 of 2006 was filed seeking a mandamus upon the respondents to grant him the benefit of promotion. Intervention of the High Court did beget the petitioner benefit of promotion, both as a Reader and then as a Professor but the bone of the contention in the present writ application is notification, contained in Annexure-3. This is a notification dated 30th June, 2010 by virtue of which petitioner was promoted notionally on the post of a Reader w.e.f. 26.7.1996 but the financial benefit was to accrue from 11.6.2007 the date he took over charge and thereafter as a Professor w.e.f. 26.7.2001 again notionally but the financial benefit was to accrue from the date he assumed charge.

2. Petitioner wants a direction upon the respondents to pay him the monetary benefit from the date of actual promotion especially in the circumstance that neither in the earlier writ application nor in the present writ application, there is

anything to indicate on behalf of the State that the petitioner was not eligible for such promotion for reasons attributable to him or that the delay in grant of promotion was in any way related to his conduct and not the respondents.

3. It is urged at the bar on behalf of the petitioner that the case of notional promotion without benefit of financial kind is not a rule but an exception and this Court on many an occasions have dealt with similar matters and have held that normally an employee would be entitled to the monetary benefit accruing from the date of order of promotion unless there are reasons to deny such benefits. One of the earliest decision in this regard which had been rendered in the case of Dr. Paras Nath Prasad vs. State of Bihar and Others, reported in 1990(2) PLJR 248 and some such other decisions which have been taken note of in the case of Md. Hafiz vs. State of Bihar and Others, reported in 2003(2) PLJR 44.

4. The Court takes notice of the fact that the learned Single Judge in case of Md. Hafiz (supra), in similar circumstance, relying on some past decisions rendered by the High Court as well as the Apex Court, did give a direction upon the respondents to pay the consequential monetary benefit on account of promotion given to that petitioner.

5. The stand of the State in the counter affidavit is that the benefit must accrue from the date an employee actually starts shouldering the responsibility. The benefit of the financial kind has been extended to the petitioner from the date he joined the post on promotion.

6. Such a stand could have merited consideration provided the orders of promotion came well within the time when eligibility of the petitioner was in place. There was deliberate delay on behalf of respondents to take decision in favour of the petitioner for unexplained reasons and only a judicial order provoked them into action and issuance of the order of promotion. Allowing such a stand of the State for denying the financial benefit would amount to awarding the State for its inaction at the cost of the citizen.

7. Taking cue from the ratios laid down in some of the decisions noted above including the case of Md. Hafiz, writ application is allowed. Respondents are directed to work out the financial benefit of the petitioner both on the post of a Reader as well as a Professor from the date the orders of promotion relate. Exercise must be completed within a period of three months from the date of production or communication of a copy of this order. Writ is allowed with above direction.