

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.10809 of 2005

SHIV SHANKAR Son of Late Sheetal Harijan, resident
of Tilakpur, Post Bamdeo, Police Station Rajaun,
District Banka, Bihar.

Versus

- 1.THE STATE OF BIHAR through Secretary, Personnel
and Administrative Reforms Department, Old
Secretariat, Patna.
- 2.Secretary, Personnel and Administrative Reforms
Department, Old Secretariat, Patna.
- 3.Bihar Public Service Commission, Bailey Road, Patna.
- 4.Secretary, Bihar Public Service Commission, Bailey
Road, Patna.

12.01.2010

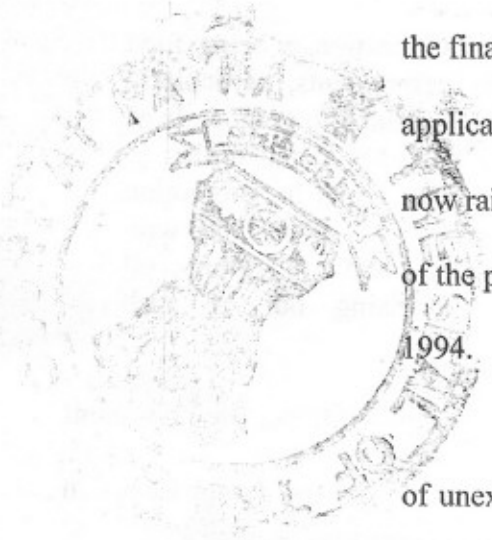
Heard Mr. Sidharth, learned counsel appearing on behalf
of the petitioner and counsel for the Bihar Public Service Commission.

Prayer of the petitioner in this writ application reads as
follows:-

“That the present writ application is being filed
for direction upon the respondents, particularly
upon the respondents no. 3 and 4 to grant scale of
Selection Grade Scale (850-1360) and further to
consider the case of the petitioner for promotion
to the post of Sectional Officer (2000-3500) with
effect from due date and to grant all
consequential benefits arising out of such
promotion.”

At the out set counsel for the petitioner would submit
that though the petitioner was given promotion in the Senior Selection
Grade of the post of Assistant by order dated 19th January, 1995 with
effect from 27.4.1994, had the respondents followed the government
circular the petitioner could have been given Junior Selection Grade
with much earlier date and the same could have also enured to the
benefit of the petitioner for giving him Senior Selection grade and the
post of Section Officer from the earlier date.

Admittedly, cause of action of the petitioner for the
aforementioned relief arose on 10.5.1991 the day on which the
petitioner instead of being given promotion to the Junior Selection
Grade was given time bound promotion. The petitioner however at that
point of time had accepted that time bound promotion and also the
financial benefits thereof. Subsequently, the petitioner had resigned the
services of Bihar Public Service Commission in order to join the new
assignment of the government and thus when the Senior and Junior of
the petitioners were given promotion in Senior Selection Grade his
name was also included by way of paper promotion in the order dated
27.4.1994 to 10.8.1994 vide Annexure-4. The petitioner also accepted
the notional benefits of such Senior Selection grade and never claimed
the financial benefits for the next ten years and therefore the present writ
application filed in 2005 to say the least is wholly belated which can be
now raised as the controversy is with regard to his previous employment
of the petitioner under the Commission where he had not continued after
1994.



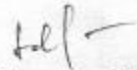
That being so, this writ application suffers from the vice
of unexplained delay and laches. Added to it, counsel for the petitioner
cannot satisfy this Court with regard to the fact that any one junior to
the petitioner had been given such benefit of junior selection grade in
the year 1991 or earlier when the petitioner was given time bound
promotion. Counsel for the petitioner could also not lay his hand on any
document which could show that any junior of the petitioner was given
senior selection grades prior the petitioner being given such notional

promotion.

The whole concept of time bound promotion vis-à-vis regular promotion has this basic difference that whereas time bound promotion has to be given to a person from a particular due date, on completion of ten or twenty five years of service, the same would not be applicable in the case of regular promotion where the benefits of selection grade being regular promotion could have been given to the petitioner only from the date any junior to him had been given such promotion. That however is not position, as has been noted above, in the present case.

That being so, this Court would not find any merit in this application and the same is, accordingly dismissed.

Abhay Kumar


(Mihir Kumar Jha, J)