

Binay Kumar Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 16, 2025

Hon'ble Judges: Ananda Sen, J

Bench: Single Bench

Advocate: Akash Topno, Varsha Ramsisaria

Final Decision: Dismissed

Judgement

Ananda Sen, J

1. By way of filing this writ petition, the petitioner has sought for following reliefs:-

“For issuance of an appropriate writ, order or direction, particularly in the nature of mandamus commanding upon the respondent authorities to consider the

case of the petitioner for promotion to the post of Deputy Chief Inspector of Factories and consequently, the Chief Inspector of Factories since 2010, although the

petitioner became eligible in the year 1999 as the said post fell vacant and still the respondent authorities are not considering the case of the petitioner for

promotion, which is illegal, arbitrary and unjust.”

2. The petitioner seeks promotion from the post of Inspector of Factory to the post of Deputy Chief Inspector of Factories.

3. It has been submitted by learned counsel representing the respondents that the petitioner has already been superannuated five years back.

4. The Hon'ble Supreme Court in the case of State of Bihar & Ors. Vs. Akhouri Sachindra Nath & Ors. reported in (1991) Suppl. (1) SCC

334, has held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be

given with retrospective effect as that might adversely affect others.

5. The Hon'ble Supreme Court in its very recent judgment in the case of Government of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors.

reported in (2024) SCC OnLine SC 3512, has held that it is a well settled principle that promotion becomes effective from the date it is granted,

rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not

only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself.

It has further held at para-21 that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of

occurrence of the vacancy or the date of recommendation.

6. To get the benefit of promotion, a person should assume the charge of the post. If a person superannuates before assuming the charge, he is not

entitled for the aforesaid benefits nor can be promoted, which is the case here, as the petitioner has admittedly superannuated.

7. Considering the aforesaid judgments, I find that no relief can be granted to the petitioner.

8. Accordingly, this writ petition is dismissed.