

**(2016) 06 PAT CK 0058**

**PATNA HIGH COURT**

**Case No:** Letters Patent Appeal No.1849 of 2010 in C.W.J.C. No. 11417 of 2002

Satyendra Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

**Date of Decision:** June 30, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2016) 4 PLJR 564

**Hon'ble Judges:** Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

**Bench:** Division Bench

**Advocate:** Mr. Ranjeet Kumar Pandey, Advocate, for the Respondent Nos. 4 and 5; Mr. Raj Nandan Prasad, SC-9 and Mr. Rakesh Prabhat, AC to SC-9, for the State; Mr. Sanjay Parasmani, Advocate, for the Appellants

**Final Decision:** Dismissed

**Judgement**

**Mr. Navaniti Prasad Singh, J.(Oral)** - This is an intra-court appeal against the order of the learned Single Judge, passed in C.W.J.C. No. 11417 of 2002 (Satyendra Kumar v. The State of Bihar and others) being order dated 17.09.2010 whereby the writ petition was dismissed on the ground that the court would not interfere where promotion is being denied on account of paucity of fund.

2. We have heard learned counsel for the appellant, learned counsel for the State and the learned counsel appearing on behalf of Gopalganj Zila Parishad.

3. Though we are of the opinion that the order of the learned Single Judge is not correct, inasmuch as, if there is a promotional avenue available to an employee, the post being available and if he is eligible he cannot be denied the right to be considered for promotion, more so, on the ground of paucity of fund. However, having heard learned counsels and having gone through the records, we are of the view that the writ petition did not merit consideration even on another ground. The writ petitioner-appellant was a Compounder appointed by Gopalganj District Board

as it then was. Having put in sufficient number of years in service the District Board resolved to promote him to the post of "Vaidya". The Executive Officer sent this resolution of the District Board for approval of the State Government, but in his recommendation he pointed out that the post of Vaidya was a different cadre and not a promotional post for Compounder which had to be directly recruited. The State Government vide the impugned order dated 26.06.2000 disapproved the said recommendation for promotion giving various reasons. It clearly pointed out that so far as Compounders are concerned, "Vaidya" is not a promotional post within the cadre, which is an absolute necessity. The action of the District Board would amount to virtual fresh recruitment and appointment which could not be done without proper advertisement in this regard. It also pointed out that when the writ petitioner-appellant was appointed as Compounder there was not even assurance or semblance of right created in him for grant of promotion to the post of "Vaidya". It is also pointed out that the promotion could not have been recommended with retrospective effect. It is lastly pointed out that the District Board was already under tremendous financial stress and by granting promotion it would be incurring further expense, which is not proper. Any promotion or recruitment that would be made in this account would be at the expense of the District Board itself with no financial support from the State. Thus, the approval was refused. This is what was challenged before the learned Single Judge.

4. As before the learned Single Judge, so before this Court it has been urged with reference to the letter of the State Government dated 03.01.1974 issued from the Planning and Development Department. We have gone through the aforesaid communication. What it refers to is that various employees of the District Board i.e. Health Officer, Engineer, Sweeper. Others are of the District Board cadre. It does not mean that, that is one cadre. People of different services having different promotional avenues cannot be placed in the same cadre. A reference to cadre here would only mean that in contradiction to State service they would be deemed to be in service of the District Board. It does not mean that Engineer, Sweeper, Compounder and Health Officer would comprise one cadre.

5. In view of the aforesaid, we find that the State was fully justified in rejecting or not granting approval for the proposed so called promotion of the Compounder to the post of "Vaidya" in Gopalganj District Board. We, thus, find no merit in this appeal. It is dismissed. Writ petition also stands dismissed.