(2016) 04 PAT CK 0085

In the Patna High Court

Case No : Letters Patent Appeal No. 137 of 2015 (Arising out of Civil Writ Jurisdiction Case No. 307 of 2014)

34540 Bihar Pradesh Prathmic Shikshak Morcha, Patna APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Citation : (2016) 2 BBCJ 464 : (2016) 3 PLJR 114

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Rajendra Prasad, Sr. Advocate and Mr. Ranjit Kumar Yadav, Advocate, for the Appellant; Mr. Rajesh Kumar, A.C. to G.P. 28, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. (Oral) - I.A. No. 575 of 2015

1. This application is for condonation of delay of 182 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 182 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 575 of 2015 is allowed and delay of 182 days in filing the present Letters Patent Appeal is condoned.

L.P.A. No. 137 of 2015

1. Heard learned counsel for the appellants and the State.

2. The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 23rd of January, 2014 in C.W.J.C. No. 307 of 2014, whereby the claim of the appellants that they are entitled to regular

pension under the Bihar Pension Rules was rejected, as there was a categorical condition in the advertisement in pursuance of which the appellants were appointed, that the appellants will be subject to the scheme of New Contributory Pension Scheme.

3. The argument of the learned counsel for the appellants is that the vacancies, against which the appellants were appointed, were pertaining to the year 2003 when admittedly, Bihar Pension Rules were applicable. Therefore, the appellants were entitled to regular pension under the Bihar Pension Rules and not under the New Contributory Pension Scheme.

4. We do not find any merit in the said argument. Firstly, the appellants responded to an advertisement published in the year 2013 which contained a specific condition that the applicants will be governed by the New Contributory Pension Scheme. Once the appellants have responded in response to an advertisement where there is a categorical condition that the appellants will be subject to the scheme of provisions of New Contributory Pension Scheme, it is not open to them to claim regular pension under the Bihar Pension Rules. The appellants would be bound by the terms of advertisement on the basis of which the appellants competed and were selected for appointment. On the day of appointment, it was New Contributory Pension Scheme alone which was in force.

5. It is further argued that in case of certain appointments made in the year 2011, the State has granted regular pension under the Bihar Pension Rules.

6. A perusal of the record shows that appointments in the year 2011 were made in pursuance of advertisement issued in the year 1988. Obviously, at that time, Bihar Pension Rules were applicable and not the New Contributory Pension Scheme, which came into force in the year 2005. Therefore, there could not be any stipulation of governing the appointees by the New Contributory Pension Scheme.

7. In view of the above, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

8. The Letters Patent Appeal is, thus, dismissed.