
(2008) 09 PAT CK 0140

In the Patna High Court

Case No : Letters Patent Appeal No. 1050 of 1999

High Court of Judicature and Another

APPELLANT

Vs

Amit Kumar and Another

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Patna High Court Officers and staff (Conditions of Service and Conduct) Rules, 1997 — Rule 13

Citation : (2009) 57 BLJR 375 : (2009) 121 FLR 516 : (2009) 1 PLJR 820

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : S.N. Jha and S.C. Mishra, for the Appellant; Ajay Kumar Thakur and Imteyaz Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kumar Prasad and Ravi Ranjan, JJ.—The High Court of Judicature at Patna, in the administrative side, aggrieved by the order dated 2.8.1999 passed by a learned Single Judge in C.W.J.C. No. 10854 of 1997, has preferred this appeal under Clause 10 of the Letters Patent.

2. Some times benevolence shown by the court makes a person greedy. The case in hand depicts that. The writ petitioner-respondent No. 1, hereinafter referred to as the writ petitioner, filed writ application before this Court, inter alia, praying for issuance of a writ in the nature of mandamus commanding the High Court to appoint him on any post commensurate to his qualification on compassionate ground. Writ petitioner's father was an employee of the court who died in a road accident on 2.8.1994, while in service. Writ petitioner although a minor filed application dated 29.6.1995 for appointment on compassionate ground. The Court showing benevolence by letter dated 25th July, 1995 informed him that his case will be considered immediately after he attains the age of 18 years in the month of April, 1996. Ultimately, after various correspondences, he was appointed as Mazdoor on daily wages on compassionate ground. A minor has no

right to be appointed on compassionate ground later on attaining the age of majority. If it is done, it shall amount to reservation in compassionate appointment. This proceeding is not an appropriate proceeding to go into the validity of the appointment. Be that as it may, it is common ground that the writ petitioner joined the post of Mazdoor and now, he is working as Ex-Cadre Assistant.

3. On the premise that the writ petitioner has already been appointed as Mazdoor, the High Court prayed for dismissal of the writ application on the ground that it has become infructuous.

However, the learned Single Judge, by the impugned order, had disposed of the writ application with the direction to the High Court to consider the case of the writ petitioner for appointment on compassionate ground within stipulated period.

Dr. S.N. Jha, Senior Advocate, appearing on behalf of the appellants, submits that appointment on compassionate ground is governed by Rule 13 of the Patna High Court Officers and staff (Conditions of Service and Conduct) Rules, 1997. According to him, nobody has right to claim appointment on a particular post on the basis of the qualification.

4. Mr. Ajay Kumar Thakur, learned Counsel appearing on behalf of the writ petitioner-respondent, however, contends that writ petitioner may not have any right to be appointed to a particular post, but certainly, he has right to be considered for appointment to a Class III post, except that of Assistant or above under the aforesaid Rule, in case, he is eligible and possesses the qualification for that.

5. Having appreciated the rival submission, we find substance in the submission of Dr. Jha. Rule 13 of the Patna High Court Officers and Staff (Conditions of Services and Conduct) Rule, 1997 reads as follows:

13.- Appointment on compassionate ground.-

The Chief Justice may appoint on compassionate ground any person having requisite qualification against any Class III post, except that of Assistant or above, or Class IV posts subject to availability of posts.

6. From a plain reading of the aforesaid provision, it is evident that Hon'ble the Chief Justice of the High Court has been conferred with the discretion to appoint on compassionate ground any person against any Class III post except that of an Assistant or above or Class IV posts subject to the availability of the posts. Candidate seeking appointment on compassionate ground, must have the requisite qualification. In our opinion, the qualification possessed by a candidate asking appointment on compassionate ground, is a relevant consideration but a candidate cannot claim appointment to a particular post on the basis of his qualification.

7. The view which we have taken, finds support from the judgment of the

Supreme Court in the case of State of Madhya Pradesh and Ors. v. Ramesh Kumar Sharma AIR 1994 SCW 218, wherein, it has been held that a candidate shall not be entitled to a higher post merely because he fulfills the requisite qualification.

8. In view of what we have discussed above, we are of the opinion that the view taken by the learned Single Judge and the direction given, is erroneous.

9. In the result, appeal is allowed and the impugned order dated 2.8.1999 passed in C.W.J.C. No. 10854 of 1997 is set aside. However, there shall not be any order as to cost.