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**(2008) 02 PAT CK 0003**  
**In the Patna High Court**  
**Case No : CWJC No. 4575 of 2007**

Justice B.N.P. Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 12-02-2008

**Acts Referred:**

Electricity Act, 2003 — Section 84, 84(1), 84(2), 85, 85(1)

**Citation :** (2008) 2 PLJR 386

**Hon'ble Judges :** Rajesh Balia, C.J;Barin Ghosh, J

**Bench :** Division Bench

**Advocate :** Sadanand Jha, Shrinandan Pd. Singh and Ashok Kr. No. 1, for the Appellant; Narendra Kishore Sinha and Md. Anis Akhtar for the state, for the Respondent

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## Judgement

1. Heard learned counsel for the parties. This petition is directed for seeking relief by the petitioner, who had been a former Judge of this Court, about emoluments which is to be extended to a High Court Judge, sitting or retired, when appointed as a Chairman of the Bihar State Electricity Regulatory Commission u/s 84(2) of the Electricity Act, 2003.

2. The contention of the petitioner has been that since he has been appointed as Chairman of the Commission in his status as a High Court Judge, the pay and emoluments attached to the Chairman manned by High Court Judge ought to be in the status of the High Court Judge and not less than that and in the case of a retired High Court Judge, such emoluments can be subject to adjustment of the pensionary benefit. On the other hand, it is contended by the respondents-State that since under the Rules the emoluments of the Chairperson has been defined and the emoluments of the petitioner has been fixed under the Rules and he having accepted the offer of appointment he is not entitled to claim anything more.

3. Section 84" of the Electricity Act, 2003 makes provision for qualifications for appointment of Chairperson and Members of State Commission which reads as

under:

"84. Qualifications for appointment of Chairperson and Members of State Commission.-(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding, anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of a High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission."

4. Section 85 provides for the process of constituting Selection Committee to select members or Chairperson of Commission. For the purpose of appointing the High Court Judge, retired or sitting, as Chairperson, the provision of appointment through Selection Committee is not applicable. Such appointment is to be made only in consultation with Chief Justice.

5. The reading of Section 84 makes it clear that so far as sub-section (1) is concerned, it itself does not make any restrictive field for selection and appointment of a Chairperson. In the ordinary circumstances expression any person shall include a person who was a former Judge of the High Court or is a sitting Judge of the High Court. However, instead of leaving matter at that the legislature has chosen to enact a non obstante clause, subsection (2) in Section 84 by enabling the State Government to appoint from amongst the persons who is or has been a Judge. of a High Court to a Chairperson of the State Commission and that has to be done in consultation of the Chief Justice. By use of expression "notwithstanding anything contained in sub-section (1)" the legislature indicated by necessary implication that persons who can be appointed as Chairperson u/s 84(2) do not fall to be appointed u/s 84(1). Obviously, sub-section (2) has been "carved out as an exception and has an overriding effect to sub-section (1) making it clear that while appointment under subsection (1) is a matter of appointment vide selection made through the Selection Committee constituted u/s 85(1). The appointment u/s 84(2) is by virtue of status of person to be appointed as Chairperson viz. a High Court Judge. The appointment of a person who is a former Judge of the High Court or a sitting Judge of the High Court is by reason of status and where the appointment is by reason of status, it must carry with it all that is attached with the status. It not only includes salary but also perquisites and fringe benefits attached to the post of High, Court Judge.

6. This is further clear from the fact that under sub-section (2) a sitting Judge of

the High Court could also be appointed as a Chairperson of the Commission where the office is to be occupied by a sitting Judge of the High Court, it is unconceivable that the offer of emoluments made to such a high dignitary could be less than what is attached to the post of a sitting High Court Judge. Perhaps for this reason it was not felt necessary to frame a separate rule for laying down terms of appointment of a High Court Judge as a Chairperson of the Commission. It is inherent in the provision of Section 84(2) that whenever a sitting High Court Judge or a retired High Court Judge is to be appointed all emoluments and benefits attached with such status shall follow to which a High Court Judge is entitled to. In view thereof, the petition is allowed. It is held that the terms and conditions of a Chairperson appointed under sub-section (2) of Section 84 is not governed by rules since it is an appointment by status-and not by selection. The State is not bound to appoint a High Court Judge, sitting or former, but if it so chooses to get the benefit of status of High Court Judge to project credibility and status of the Commission, it must take the burden of having a Chairperson in the status of High Court Judge. Obviously, the rule framed under the Act is applicable only to the Chairperson/Member appointed u/s 84(1) and not to person who is. or has been a High Court Judge appointed u/s 84(2). The respondent-State is directed to extend all the emoluments of a sitting Judge to the petitioner so long he continue as Chairperson of the Commission including perquisites attached to it. However, amount of pension shall be adjusted upon such emoluments.