
(2006) 02 PAT CK 0064
In the Patna High Court
Case No : LPA No. 79 of 2006

Panchdeo Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 PLJR 456

Hon'ble Judges : J.N. Bhatt, C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh and Krishna Kant Singh & J.P. Karn, for the Appellant; S.J. Rahman, for the Respondent

Final Decision : Allowed

Judgement

1. Upon consideration of the facts and circumstances and the ground stated in the application for condonation of delay, we are satisfied that there was sufficient cause for not filing the Letters Patent Appeal within the period of limitation. Hence, the delay is condoned, as prayed for, and the application is allowed. Rule is made absolute. No cost. Upon the matter being called out today, learned Counsel for the petitioner Mr. Ganesh Pd. Singh, Sr. Advocate, sought permission to delete the names of proforma respondent Nos. 6 & 7, who are original petitioner Nos. 2 & 3, against whom no relief is sought in this Letters Patent Appeal. Permission is granted to delete their names.

2. Mr. S.J. Rahman (G.P. 7) appears for the State-respondents upon a joint request and consensus, the matter is taken up for final hearing as the service on rule has been waived by the learned Counsel for the State Mr. S.J. Rahman. As such the controversy is shrunk to narrow dimension in this Letters Patent Appeal.

3. The appellant-original petitioner No. 1 and two other petitioners, thus, in all three petitioners, initiated the legal battle by filing the CWJC. No. 3670 of 2004, inter alia, contending that their claim for promotion to the post of Joint Director

with all consequential benefits including financial benefits came to be wrongly rejected by invocation of the provision of Article 226 of the Constitution of India.

4. The learned Single Judge, upon consideration of the facts and circumstances, reached to the conclusion that the case of the original petitioners 2 & 3, namely, Devendra Prasad and Ravindra Singh should be reconsidered for promotion from the due date, that is, 17.6.1999 with all consequential benefits including the monetary benefits with a further direction that necessary notification or orders ought to be issued in that regard within a stipulated time, whereas, in the case of the appellant-original petitioner No. 1, the observations came to be made in "Para-1" at "Page-3" of the judgment of the learned Single Judge, which was rendered on 9.11.2005, and is, directly, under challenge in this Letters Patent Appeal by invocation of Clause 10 of the Letters Patent, that recommendation of the Departmental Promotion Committee with regard to the appellant-original petitioner No. 1 came to be made after his retirement. It is only on that ground the claim for promotion of the appellant-original petitioner No. 1 is held to be not maintainable. With due respect, this observation cannot be acceded to.

5. In terms of the principles of the celebrated Service Jurisprudence, a person, who has been considered and found entitled to the benefits of promotion is bound to be given that benefit regardless of the fact whether he is in service or he is not in service. In other words, even after retirement or superannuation of a person, whose case on consideration, in case, is found fit for promotion, he must be given such benefits even if such benefits are found due and payable even after retirement. Even upon notional promotion, also, all consequential financial benefits may accrue to him.

6. We appreciate the gesture of the State Counsel Mr. S.J. Rahman G.P. 7, appearing for the State-respondents, who has, fairly, stated that that aspect of retirement itself would not, in any way, constitute an impediment or hurdle in getting the notional promotion and consequential monetary benefits. It is in these context, we are left with no option but to reverse the observation and direction of the learned Single Judge qua the appellant-original petitioner No. 1 and, consequently, the impugned order dated 15.12.2003, as contained in Annexure-1 against the appellant-original petitioner, shall, also, stand quashed.

7. Insofar as the impugned judgment is concerned, since the learned Single Judge has directed for reconsideration of the case for promotion of remaining two original petitioner Nos. 1 & 2, while quashing the observation adverse to the original-petitioner appellant before us in this Letters Patent Appeal, we direct that even the case of the appellant-original petitioner No. 1 shall, also, be considered on merits and in accordance with law and relevant Rules and he on being found fit and promoted shall be paid all consequential monetary benefits. The Letters Patent Appeal shall, accordingly, stand allowed.