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(2013) 01 PAT CK 0087

In the Patna High Court

Case No : Letters Patent Appeal No. 366 of 2011

Priya Kant — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) LabIC 1817

Hon'ble Judges : Shivaji Pandey, J;Navin Sinha, J

Bench : Division Bench

Advocate : Akashdeep, for the Appellant; Chakradhari Shar Singh, AAG, for the Respondent

Judgement

Navin Sinha, J.—The appellant is aggrieved by order dated 18.11.2010 passed in C.W.J.C. No. 11365/96. It rejects his challenge to reversion on a Class-4 post after earlier compassionate appointment on a Class-3 post. The reason was his inability to pass the Hindi Typing Test as incorporated in the letter of appointment. We have heard counsel for the parties. The only question of law for consideration is that if the respondents could impose such condition in the letter of appointment, at variance with and contrary to that provided in Rule-148 of Chapter-VIII of the Bihar Board Miscellaneous Rules, 1958 relating to ministerial and non-gazetted officers. The Rule reads as follows:--

148: Selection of ministerial officers:--

All probationary clerks in Commissioner''s offices should be selected by Commissioner and in district and sub-divisional offices by District Officers with due regard to the orders of Government relating to the representation in Government service of members of schedule castes and backward classes and tribes, provided that suitable candidates belonging to these castes, classes and tribes, are available. A candidate for a vacant post must fulfill the following conditions:--

NOTE - (i) Government recognize the final passing out of examination of the

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Indian Mercantile Marine training ship "Dufferin" and certain examinations of National Universities mentioned in Appendix-Z and also the Junior Cambridge Examination and the Indian Army first class English Certificate as equivalent to the Matriculation examination for purposes of entry into public service in this province.

(ii) As knowledge of typewriting is valuable for almost all clerks it should count as an additional but not indispensable qualification.

2. A bare perusal of Note-II makes it explicit that passing typing test was an additional, but not an indispensable qualification.

3. Our attention has been invited to a Division Bench decision in L.P.A. No. 1757/10 interpreting the Rule in context of a similar reversion for not passing the typing test. It was held that it not being an indispensable qualification, reversion on that ground was not sustainable. Sitting in coordinate jurisdiction the ratio binds us.

4. The appellant relied upon certain earlier orders of the Court on the issue as mentioned in the order impugned. Details of those orders have not been discussed much less the reasons for their inapplicability. The writ Court erred in law holding by a non-speaking order that the Statutory Rules could be superseded by conditions incorporated in the letter of appointment beyond or at variance with the same. The imposition of the condition contrary to statutory law was itself per se arbitrary. If a condition contrary to the Rules, was incorporated in the appointment letter it could not operate as estoppel either.

5. A litigant who is granted relief may not be much interested in knowing the reasons. It is that litigant denied relief who stops to read the order. He first wants to be satisfied that the Court understood his case. In that event he would be better able to appreciate the reason for denial of relief. But if his contentions have not been properly considered and refused by a reasoned order, it will leave him with a sense of injustice. Reasons have therefore been held to be an integral part of judicial decision making and are not restricted in its applicability to administrative or quasi-judicial orders only.

6. The importance of a reasoned speaking judicial order was emphasized in State of Orissa Vs. Dhaniram Luhar, holding:

8. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

7. We are not impressed with the submission made on behalf of the State that once the appellant accepted the conditions of the appointment incorporating the

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need to pass the test, the contract binds the parties. That the appellant unsuccessfully appeared on more than one occasion disentitles him to necessary consequential relief. We are satisfied to hold that the condition imposed in the appointment letter being contrary to Rule-148 of the Rules was itself void and non est.

8. The Government policy for compassionate appointment itself provides for such appointment on class III and IV posts. The petitioner was appointed on a Class III post and then reverted. He does not seek directions for appointment on a class III post. The conclusion to that effect of the writ Court is also not sustainable.

9. The order dated 1.10.1996 is set aside.

10. In Vimal Kumari Vs. The State of Haryana and Others, granting consequential relief after setting aside the order of illegal reversion consequential relief including arrears of salary was directed which we follow: 10. ...The appellant shall be allowed to continue on the post of Superintendent and shall be paid all consequential benefits, including the arrears of salary....

The order to be complied with within a maximum period of six weeks from the date of receipt/production of a copy of this order.

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