(2006) 10 PAT CK 0034

In the Patna High Court

Case No : Letters Patent Appeal No. 331 of 1998

Shri N.C. Lala — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:
Bihar Sales Tax Rules, 1983 — Rule 33(11), 33(2), 33(6)

Citation : (2006) 4 PLJR 527

Hon'ble Judges : Barin Ghosh, J;Ajay Kumar Tripathi, J

Bench : Division Bench

Advocate : Amit Prakash, for the Appellant; Piyush Lall, JC to AAG 3, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Ajay Kumar Tripathi, JJ.—Sub-rule (2) of Rule 33 of the Bihar Sales Tax Rules, 1983 provides that the Tribunal constituted u/s 8 of the Act shall consist of three members; one of whom shall be a retired High Court Judge not exceeding 65 years of age or a Judicial Officer of the rank of District Judge and he shall be the Chairman of the Tribunal. Sub-rule (6) of Rule 33 of the said Rules provides that any person appointed as a Member of the Tribunal shall ordinarily hold office for a period of three years. Sub-rule (11) of Rule 33 of the said Rules provides that the Members of the Tribunal shall ordinarily be appointed for a period of three years from the date of their appointments, provided that the period of appointment may be reduced or extended by the State Government.

2. The writ petitioner-appellant was appointed as the Chairman of the Tribunal when he was a Judicial Officer of the rank of District Judge. The appointment letter provided that such appointment is for a period of three years. The writ petitioner retired from the post he was holding as a Judicial Officer of the rank of District Judge prior to expiry of three years from the date of his appointment and accordingly he was asked to step down from the post of Chairman of the Tribunal.

3. In the Writ Petition, the petitioner contended that Sub-rule (2) of Rule 33 of the said Rules prescribed the basic minimum required qualification which may entail an appointment, and once that appointment is made, the same in view of Sub-rules (6) & (11) of Rule 33 of the Rules, will continue for a period of three years ordinarily from the date of appointment. The appellant-writ petitioner lost before the learned Single Judge and accordingly as assailed the judgment and order passed by the learned Single Judge dismissing the writ petition.

4. It is the contention of the appellant that he having been appointed, when he was qualified to be appointed, he could hold the post for three years and that was the ordinary tenure of the post and while serving as Chairman of the Tribunal, whether he lost the qualification to be appointed is of no consequence.

5. There cannot be any dispute that on retirement the writ petitioner-appellant did not remain a Judicial Officer of the rank of District Judge. If Sub-rule (2) of Rule 33 of the said Rules provides for a qualification for being appointed, there is some substance in the arguments advanced by the appellant, but having regard to the fact that the qualification as prescribed in Sub-rule (2) of Rule 33 is attached to the person to remain as a Chairman of the Tribunal, he must have such qualification during the entire tenure when he is holding the post of Chairman. The moment he loses such qualification, he is disqualified to clinch on to the post in question.

6. In those circumstances, the moment the appellant-writ petitioner ceased to be a Judicial Officer of the rank of District Judge he lost his right to remain Chairman of the Tribunal.

7. We accordingly find no reason to interfere. The appeal fails and the same is dismissed.

