

(2020) 02 PAT CK 0264

In the Patna High Court

Case No : Letters Patent Appeal No. 812 Of 2019, Civil Writ Jurisdiction Case No. 2332 Of 2017

State Of Bihar And Ors

APPELLANT

Vs

Ashwani Kumar Jha

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0264

Hon'ble Judges : Dinesh Kumar Singh, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Anil Kumar, Satish Chandra Jha

Final Decision : Dismissed

Judgement

Heard Mr. Anil Kumar, learned A.C. to A.A.G. 9 and Mr. Satish Chandra Jha No. 3, learned counsel for the sole respondent.

The aforesaid interlocutory application has been preferred for condonation of delay of 240 days in filing this present letters patent appeal.

In the facts and circumstances, considering the grounds taken for not filing the appeal in time, we condone the delay in filing the same.

The present appeal has been preferred against the judgment dated 11.10.2018 passed in C.W.J.C. No. 2332 of 2017 whereby the learned single judge has set aside the office order dated 27.10.2016 whereby the sole respondent was demoted from Class III post to Class IV post and consequently, the learned single judge directed the respondent authority to consider the case of the petitioner herein for promotion after completion of three years subject to the condition that the respondent would embark upon the necessary exercise to find out the availability of unreserved category of post in Class III category in the event of availability of the same the date of promotion of the petitioner will be adjusted.

The factual matrix of the case is that the sole respondent was initially appointed as a Daily Wages employee to work as Inculcator vide Memo No. 1134 dated 15.09.1984, issued under the signature of the Civil Surgeon-cum-Chief Medical Officer, Saharsa and consequently he was directed to join the Primary Health Centre, Navhatta (Saharsa) where he joined and started working as daily wage employee. The services of the sole respondent was regularized as Cook in the light of the direction issued by the Health Directorate, Bihar, Patna vide Memo No. 379 dated 30.03.1987 issued by the Civil Surgeon-cum-Chief Medical Officer, Saharsa in the pay scale of Rs. 350-3-380-5-400 and consequently respondent gave his joining on 30.03.1987 before Incharge Medical Officer, Simrahi Hospital (Saharsa) which was accepted. Consequently, the Civil Surgeon -cum- Chief Medical Officer, Saharsa issued notice whereby applications were invited from the interested persons for promotion to Class III posts. Consequently, the respondent also applied where after the petitioner received a interview letter issued by Civil Surgeon-cum-Chief Medical Officer, Saharsa vide letter bearing Memo No. 147 dated 19.01.1988 directed to appear on 27.01.1988 along with educational certificates and caste certificate. Similar directions were also issued subsequently vide Memo no. 734 dated 15.03.1988 issued by Civil Surgeon- cum -Chief Medical Officer, Saharsa directing the respondent to appear on 23.03.1988 along with educational certificates and on that date he produced all the educational certificates and on successful completion in the interview the respondent was promoted on Class III post at Additional Primary Health Centre, Bhaptiyari (Saharsa) where he gave his joining on 26.03.1988 but ultimately the respondent was demoted to Class IV post on account of the order passed in LPA No. 448 of 2005 Arvind Kumar Yadav Versus State of Bihar & Ors. in which a Division Bench of this court held that the persons from the technical cadre cannot be promoted to non technical cadre that too by the Committee which was not properly constituted however the Division Bench directed to fill up the non technical posts within a period of four months. The relevant portion of the direction reads as follows:-

"However, as it appears that there is an avenue of promotion to the Basic Health Workers to the technical side, in case there are vacancies and they are found fit, their cases should be considered for promotion from a date when the vacancy arose keeping in mind the nature of vacancy and the restriction put on the same by the government. So far Class IV employees are concerned, if there are vacancies then their case should also be considered in the same manner. The authorities should consider and take decision expeditiously preferably within four months from the date of receipt / production of a copy of this order."

The respondent challenged his reversion order issued vide Memo no. 1436 dated 27.10.2016 from Class III to Class IV post issued by Civil Surgeon -cum- Chief Medical Officer, Supaul in C.W.J.C. No. 2332 of 2017 whereby the learned single judge directed to consider the case of promotion of the respondent after completion of three years subject to condition that respondent would embark upon necessary exercise to find out the availability of unreserved category of

post in Class III category and in the event of availability of the same the date of promotion of the respondent would be adjusted.

The relevant portion of the impugned judgment reads as follows:-

"In the present case also the justice can be done in the manner that the respondent authority should consider the case of the petitioner for promotion after completion of three years subject to condition that respondent would embark upon necessary exercise to find out the availability of unreserved category of post in Class III category in the event of availability of the same the date of promotion of petitioner will be adjusted.

All the process should be completed within a period of four months from the date of receipt / production of a copy of this order.

Accordingly, the impugned order dated 27.10.2016 is set aside and this writ petition is allowed to the aforesaid extent."

Against the said order, the present L.P.A. has been preferred.

Learned counsel for the appellants submits that in view of the Division Bench judgment of this Court, the petitioner was reverted because he was illegally promoted and hence the petitioner can not be promoted.

From the factual position discussed hereinabove it is apparent that the Division Bench of this Court in the case of Arvind Kumar Yadav Versus The State of Bihar & Ors., in L.P.A. No. 448 of 2005 was considering the issue of promotion of Basic Health Workers (technical cadre Class IV) to the post of Clerk (non technical cadre) by the Committee which was not properly constituted. Taking shelter of that the appellant-State has approached this Court, however it failed to consider that the Division Bench in the said judgment clearly directed that so far Class IV employees are concerned, if there are vacancies then their case should also be considered in the same manner and the authorities should consider and take a decision expeditiously preferably within four months from the date of receipt / production of the copy of the order and the order of learned single judge is nothing but reiteration of the directions given by the Division Bench.

In our considered view, the appeal is absolutely misconceived. It is, accordingly, dismissed.

We, somehow, have restrained ourselves not to impose cost for filing such frivolous appeal.