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(2015) 03 PAT CK 0098

In the Patna High Court

Case No : LPA No. 135 of 2015 in CWJC No. 19043 of 2011

Sukh Narain Tiwari APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2015) 4 PLJR 290

Hon'ble Judges : L. Narasimha Reddy, C.J. and Vikash Jain, J.

Bench : Division Bench

Advocate : D.K. Tiwari, Krishna Kant Tiwari, R.K. Ravi and W. Rahman, for the Appellant; Kundan Bahadur Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, C.J.

I.A. No. 580 of 2015

1. This interlocutory application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 19 days in preferring the Letters Patent Appeal. In view of the reasons assigned in the interlocutory application, delay is condoned. The application is allowed.

LPA No. 135 of 2015

2. This appeal is preferred against the order dated 21.10.2014 passed by the learned Single Judge in CWJC No. 19043 of 2011.

3. The unsuccessful petitioner is the appellant. The relevant facts of the case are as under:--

The appellant joined the service in Tube-well Division of the Minor Irrigation Department of the State of Bihar in Class-III and he retired in that very post, on 31.3.2000. Three years after his retirement respondents initiated proceedings for

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recovery of amount of Rs. 3,07,783/-. The reason mentioned therefore is that the appellant was not entitled to be extended the benefit of increment in the year 1986 unless there was direct exemption from passing the Hindi Notings and Drafting Examination; but the increment was extended to him, erroneously.

4. Petitioner filed CWJC No. 2783 of 2004 challenging the proceedings. Through order dated 10.7.2009, the same was disposed of directing that it will be open to the petitioner to submit a representation before the 3rd respondent and he in turn, shall dispose of the said representation. Thereafter, the respondent passed an order dated 9.1.2010. Challenging the same, appellant filed CWJC No. 19043 of 2011. While disposing of the same, learned Single Judge took the view that ones the petitioner was found to be not entitled to the exemption, his pay structure was liable to be re-determined and dismissed the writ petition. Hence, this appeal.

5. Heard Sri D.K. Tiwari, learned counsel for the appellant, Sri Kundan Bahadur Singh, learned Standing Counsel for the State and Sri Madhuresh Prasad, learned counsel for the Accountant General.

6. The basic facts are not in dispute, and the entire controversy centres around the question as to whether the appellant was entitled to be extended the benefit of increment of Rs. 50/-. According to the respondents, pay-scale of Rs. 1,750/- was enhanced to Rs. 1,800/- though the appellant did not pass Hindi Notings and Drafting Examination. They did take note of the Rule which provides exemption in favour of a person who completed 50 years of age at the relevant point of time. In the impugned order, it was mentioned that an employee would be entitled to be extended the benefit of exemption, if only he appeared in the examination, but failed and meanwhile he crossed the age of 50 years. It was pointed out that the appellant did not make any attempt at all, but was extended the benefit of exception simply because he crossed the age of 50 years.

7. Even if what is pleaded by the respondents is true, it is not on account of the misrepresentation on the part of the appellant, that they fixed the pay-scale of the petitioner. On his part, the appellant did not make any representation for grant of exemption. Assuming that the exemption was granted to the appellant on the basis of any representation, the respondents are not justified to reopen this issue after his retirement. We are of the view that 4th respondent may be permitted to re-fix the pensionary benefits by denying the benefit of Increment in question to the appellant but they shall not be entitled to make any deduction.

8. We, therefore, allow the appeal in part and modify the order dated 21.10.2014 passed in CWJC No. 19043 of 2011 to the extent that the respondents shall be entitled to refix the pension of the appellant by denying the increment in question, but they shall not be entitled to make any recovery of the amount already paid to him upto the re-fixation of the pension. If any amount due otherwise to the appellant has not been paid to him on account of the pendency of these proceedings, the same shall be released in his favour, within a period of

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two months. There shall be no order as to costs. The interlocutory application, if any, shall stand disposed of.

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