

(2007) 04 PAT CK 0178
In the Patna High Court
Case No : LPA No. 1407 of 2005

The State of Bihar and Others		APPELLANT
	Vs	
Er. Ram Babu Gupta and Others		RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2007) PLJR 160

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the Advocate General and Mr. Narendra Prasad. In the facts and circumstances of the case the delay in filing the appeal is condoned.
2. Aggrieved by the order, dated 11.5.2004 by which a learned Single Judge disposed of the writ petition filed by respondents 1 to 6 in their favour, the State has preferred the appeal. The Advocate General submitted that the learned Single Judge mis-construed the matter at issue and gave directions in favour of the writ petitioners-respondents, relying upon a decision that has no application to the facts of the case.
3. The order coming under appeal is very brief. The learned Judge seems to have taken the view that what remained after the developments taking place during the pendency of the writ petition was fully covered by an earlier decision in Md. Izharul Haque Vs. The State of Bihar and Others, and directed that in terms of that decision the State authorities should effectuate the promotion of the writ petitioners with effect from the due date and not from the date of the actual notification.
4. Mr. Advocate General submitted that in Md. Hafiz the issue was that an employee could not be denied the material benefits accruing from a notional promotion given from a retrospective date. In case of Md. Hafiz though the promotion notification was issued much later, the concerned employee was

granted notional promotion w.e.f. a retrospective date. The promotion notification, however, stipulated that the material benefits on the basis of the promotion would accrue from the date of joining and not from the date of promotion. The court, held relying upon several earlier decisions, that that was not permissible and the employee would be entitled to the benefits of promotion from the date of the promotion.

5. In the case in hand that was not the issue. The writ petitioners-respondents were granted promotion by notification, dated 17.1.2002 not from any retrospective date but from the date of their joining the higher post. The petitioners, however, were claiming that their due dates of promotion should be much earlier falling in the year, 1999 in case of petitioners 1, 2 and 4 and on 1.4.1993 in case of rest of the petitioners.

6. Mr. Advocate General also said that whatever be the merits of the claim of the writ petitioners, the learned Single Judge gave direction in their favour without appreciating the real issue and apparently relied upon a decision that had no application to the facts of the case.

7. Mr. Narendra Prasad, Senior Advocate appearing for the respondents accepted that the real issue in the case was with regard to the due date from which the writ petitioners-respondents were entitled to promotion.

8. From a perusal of the writ records it is evident that in December, 2000 when the writ petition was filed in the court, the petitioners were Junior Engineers. They came to the court seeking a direction to the respondent authorities to consider their case for promotion to the posts of Assistant Engineer against the quota reserved for AMIE or equivalent degree holders Junior Engineers. During the pendency of the case the respondent authorities issued notification, dated 17.1.2002 by which a large number of Junior engineers, including the writ petitioners were promoted as Assistant Engineers. The promotion was with effect from the date they joined the higher posts of Assistant Engineer. Thus, the grievance of the writ petitioners was redressed to a large extent but still the controversy with regard to due dates of their promotion remained unresolved.

9. The aforesaid notification, dated 17.1.2002 was brought on record of the writ case along with I.A. No. 616 of 2002. In the I.A. it was claimed on behalf of the writ petitioners that they were entitled to promotion, on completion of their qualifying period of service against vacancies that had arisen long ago. According to the petitioners, petitioners 3, 4 and 5 were entitled to promotion as Assistant Engineers w.e.f. 1.4.1993 and petitioners 1, 2 and 6 w.e.f. 1.1.1999. Apparently the real controversy that remains to be resolved and adjudicated upon was overlooked and the court gave a direction apparently in the petitioners' favour, relying upon the decision in Md. Hafiz which had no application to the controversy as indicated here.

10. Under the circumstance the order of the writ court is difficult to sustain and how so far loath we may feel, the matter has to go back to the writ court for a

proper adjudication on the real controversy between the parties. We accordingly set aside the order coming under appeal and (sic)nit the matter before a learned Single (sic) currently in seisin of the matter under the writ roster.

11. Before concluding the order, it is needed to take note of certain developments. After the order of the writ court (set aside by us in appeal) the writ petitioners filed a contempt petition being M.J.C. No. 952 of 2005. Apparently under the pressure of the contempt case the respondent authorities issued an order under memo No. 307, dated 4.2.2006 by which the writ petitioners-respondents were given promotion w.e.f. 1.1.1999. This would have completely redressed the grievance of respondents 1, 2 and 4 but there is the catch that the notification was made subject to the final result of this appeal. Since we are not adjudicating upon the matter and remanding the case for decision before the writ court, we consider it proper to direct that the aforesaid order, dated 4.2.2006 shall remain operative during the pendency of the writ petition but it will abide by the final decision of the writ court.

12. In the result this appeal is allowed subject to the observations and directions made above. It will be open to the parties to make a prayer before the concerned bench for an early hearing.