(2011) 01 PAT CK 0156

In the Patna High Court

Case No : L.P.A. No. 1063 of 2010

The State of Bihar and Others APPELLANT

Vs

Ganesh Prasad and Others RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 59 BLJR 3357 : (2011) 3 PLJR 87

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Advocate : Nilu Agrawal and Zaki Haider, for the Appellant; Ramesh Chandra Sinha, for the Respondent

Judgement

1. Heard Mrs. Nilu Agrawal, learned G.A. 6 as well as Mr. Ramesh Chandra Sinha, Learned Counsel appearing for the Respondent Nos. 1 to 3.

2. This appeal under Clause 10 of the letters Patent of the High court of Judicature at Patna raises a grievance with respect to the order dated 9.2.2010 passed by a learned Single Judge in C.W.J.C. No. 14259 of 2003, whereby he directed the Respondent State to consider the case of the writ Petitioners for promotion to the post of Personal Assistant in accordance with their date of eligibility in terms of Government instruction dated 7.8.1987, as modified with effect from 30.8.1988, within a maximum period of four months.

3. Before we take up the rival submissions made on behalf of the parties, it would be necessary to note the facts of the case in some detail. Respondent No. 1 Ganesh Prasad claims to be appointed as Steno-Typist in the Commercial Taxes Department on 9.1.1975, whereas Respondent No. 2 Kumar Luvkush and Respondent No. 3 Renu Mathur claim to be appointed on the same post on 19.6.1981 and 12.4.1978 respectively. On 23.2.1987 the Government took a decision of merging the Steno-typist working up to 10.7.1979 in the cadre of Personal Assistant. Subsequently, the department of Personnel and Administrative Reforms vide its letter No. 753 dated 18.9.1990 changed and ex

tended the cut off date from 10.7.1979 to 10.11.1988, thus permitting all the Steno-Typist appointed either in the Secretariat or its attached offices appointed before 10.11.1988 to be merged in the cadre of Personal Assistant. The State of Bihar vide a Gazette notification dated 1.6.1992 (Annexure-6 to the writ petition) detailed the list of offices, that would come within the purview of Secretariat and its attached offices. On 23.6.1995, the services of 23 Steno Typist were merged in the cadre of Personal Assistant. However, the department did not recommend the name of writ Petitioners, in the cadre of Personal Assistant. The writ Petitioners being aggrieved (sic) this Court in C.WJ.C. No. 9274 of (sic)97. This Court vide order dated 27.9.1999, contained in Annexure-8 of the writ petition, directed the Secretary, Personnel and Administrative Reforms Department to consider the case of the writ Petitioners for their absorption in the cadre of Personal Assistant in the Secretariat and its attached offices in accordance with law within a period of two months thereof. In the light of order dated 27.9.1999 of this Court, the writ Petitioners filed representations for their absorption in the cadre of Personal Assistant which was ultimately rejected on 12.11.2000 by the Personnel and Administrative Reforms Department. A copy of same has been annexed as Annexure-9 to C.W.J.C. No. 14259 of 2003. The rejection order dated 12.11.2000 stated that the writ Petitioners were appointed for the Regional Offices and they were not appointed for the Secretariat or its attached offices. The writ Petitioners filed C.W.J.C. No. 14259 of 2003, against order dated 12.11.2000 of the department of Personnel and Administrative Reforms which was allowed. Now it was turn of the State of Bihar to move this Court in L.P.A. against the order of learned Single Judge allowing the application.

4. Mrs. Nilu Agrawal, learned State Counsel submits that the Respondent Nos. 1 to 3 were appointed for the Regional Offices and not appointed in the Secretariat or its attached offices. She states that the attached offices have been notified vide notification dated 28.5.1992 contained in Annexure-3 to this appeal. She submits that it is true that the office of the Com missioner, Commercial Taxes is also one of such attached offices. However, none of these Respondents were appointed in any of the attached offices enumerated in the notification dated 1.6.1992, contained in Annexure-6 to the writ application. In support of her submissions, she has annexed photo copies of service book of the Respondents to show that the Respondents were not appointed in the office of the Commissioner, Commercial Taxes, so as to bring them within the meaning of attached offices contained in Annexure-3 to this appeal as well as Annexure-6 to the writ application. She states that the appointment of Respondent No. 1 Ganesh Prasad was issued by the Secretary to the Commissioner of Commercial Taxes. The Respondent No. 2 Kumar Luvkush was appointed in the office of the Assistant Commissioner, Commercial Taxes and Respondent No. 3 Renu Mathur was appointed in the Vigilance Office of the Commercial Taxes. Thus, the case of Appellant is that none of the Respondents were appointed in the office of the Commissioner, Commercial taxes.

5. She next submits that it would also appear from their pay scales drawn at the

time of their appointment that they were not appointed in Secretariat and its attached offices. She states that Respondents in the appeal were in the same pay scales as being drawn admittedly by the employees on the same post in the Mufassil and Regional Offices. Learned Counsel drawing our attention to Annexure-6 series pointed that whereas the Lower Division Clerk and Upper Division Clerk pertaining to the Secretariat and its attached offices merged in the year 1977, the Lower Division Clerk and Upper Division Clerk working in the Mufassil and Regional Offices merged in the year 1980. On these basis, Learned Counsel submits that the Respondents neither belonged to the Secretariat or its attached offices and as such the learned Single Judge erred in holding that the Respondents belonged to the attached offices of the Secretariat.

6. Mr. Ramesh Chandra Sinha, Learned Counsel appearing on behalf of the Respondents stated that the latter were appointed in the office of the Commissioner, Commercial Taxes which is attached office of the Secretariat in view of notification dated. 1.6.1992, contained in Annexure-6 to the writ petition. He submitted that the writ Petitioners had earlier moved this Court vide C.W.J.C. No. 9274 of 1997 wherein this Court vide order dated 27.9.1999 observed that the State-Respondent was under wrong impression that the writ Petitioners-Respondents herein were not employees of the Secretariat and its attached offices. He, however, does not deny that this Court nonetheless vide order dated 27.9.1999 contained in Annexure-8 to C.W.J.C. No. 14259 of 2003 directed the Respondent-State to examine the claim of the writ Petitioners in accordance with law. In case the State rejects the claim of the writ Petitioners, the rejection order should be communicated to them.

7. Heard counsel for the parties.

8. It appears that the Government ultimately took a decision on 18.9.1990 to merge the post of Steno-Typist working up to 10.11.1988 either in the Secretariat or its attached offices in the cadre of Personal Assistant. The offices that would come under the fold of Secretariat and its attached offices have been duly notified in notification dated 1.6.1992 contained in Annexure-6 to the writ petition. It would appear from perusal of the notification that the office of the Commissioner, Commercial Taxes has also been notified as one of the attached offices at SI. No. 22. Thus the main issue is whether the Respondents were appointed and working either in the Secretariat or its attached offices or not.

9. Mrs. Agrawal apart from annexing relevant extract of service book of the Respondents has also produced the original service book before this Court. From perusal of the service book of the Respondents, it would appear that Respondent No. 2 was appointed in the office of the Assistant Commissioner of Commercial Taxes, Patna City, whereas Respondent No. 3 was appointed in the office of the Vigilance Wing of the Commercial Taxes Department. So far as Respondent No. 1 is concerned, it appears that notification of his appointment was issued by the Secretary to the Commissioner of Commercial Taxes. There is nothing therein to show that Respondent No. 1 to the appeal was appointed for the Regional or

Mufassil Offices. The notification dated 1.6.1992 enumerating the offices which would come under the purview of attached offices do not include the office of the Assistant Commissioner of Commercial Taxes nor the office of the Vigilance in the Commercial Taxes Department as one of the attached offices of the Secretariat. As such, we find substance in the submissions of learned State counsel of Appellant State of Bihar so far as Respondent Nos. 2 and 3 are concerned. So far as Respondent No. 1 Ganesh Prasad is concerned, we find that his appointment was notified by the Secretary, Commercial Taxes Department and as such we find that the Respondent No. 1 was appointed and was working in the office of the Commissioner, Commercial Taxes.

10. Counsel for the State has referred to Annexure-10 and Annexure-6B to show that the Respondent No. 1 was drawing pay scale permissible to the Steno-Typist appointed in the Mufassil Office. The Appellant State has also drawn our attention to the fact that the service of Respondent No. 1 was merged in the year 1980 with the services of other Lower Division Clerks and Upper Division Clerks working in the Mufassil and Regional Offices. On these basis, the State wanted to persuade us to come to a decision that Respondent No. 1 was also appointed in the Regional Office.

11. The grant of different pay scales on assumption that Respondent No. 1 was not appointed for attached office would not be a conclusive proof of fact that Respondent No. 1 was not appointed and was not working in the office of the Com missioner, Commercial Taxes, which would be evident from perusal of his service book. The intent of the appointment letter would be the relevant factor for determining the nature of appointment and the place, office or post to which one is appointed.

12. In view of the aforesaid discussions, the State appeal is allowed so far as Respondent Nos. 2 and 3 are concerned and it is dismissed as against Respondent No. 1.

13. In the result, this appeal is al lowed in part to the extent indicated above. There shall be No. order as to costs.