IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1498 of 2014

IN

Civil Writ Jurisdiction Case No. 5587 of 2007

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1. The Allahabad Bank through the Deputy General Manager, Allahabad Bank, Zonal Office, Shakti Commercial Complex, Boring Road, Patna.
2. The Deputy General Manager, Allahabad Bank, Zonal Office, Shakti Commercial Complex, Boring Road, Patna.
3. The Senior Manager, Personnel, Allahabad Bank, Divisional Office, Shakti Commercial Complex, Boring Road, Patna.
4. The Regional Manager, Allahabad Bank, Muzaffarpur.
5. The Manager, Biddupur Branch of Allahabad Bank, Vaishali.

.... Respondents/Appellants

Versus

Prashant Chandra Jha, Son of Late Deo Chandra Jha, resident of Mohalla-Bank Men's Colony, Chitragupta Nagar, P.S.-Kankarbagh, District-Patna.

.... Petitioner/Respondent

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Appearance :

For the Appellants : Mr. Naresh Kumar Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha, Advocate

For the Respondent : Mr. Shankar Kumar Thakur, Advocate
Mr. Baidya Nath Thakur, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 11-08-2015

This Letters Patent Appeal arises out of an order, dated

26/11/2013, passed by the learned Single Judge, in C.W.J.C. No. 5587 of 2007, whereby he has allowed the writ application filed by the respondent and has quashed the order, dated 12/10/2000, issued by the appellant, Allahabad Bank. By the said order dated 12/10/2010, two graduate increments in salary of the respondent granted to him earlier on the basis of certain certificate issued by the Indian Air Force, had been held to inadmissible. The appellant Bank intended to recover the amount so paid to the respondent.

2. The respondent herein was holding the rank of Sergeant in Indian Air Force. He held Diploma in Electronics and Tele-Communication Engineering and worked in Indian Air Force from 19/05/1977 to 31/05/1992 in the trade “Radio Fitter”. The Indian Air Force granted him a certificate, dated 13/06/1995, to the effect that he would be considered eligible for such posts, where qualification required is “degree in Electronics and Tele-Communication Engineering”. There is another certificate issued to him, dated 13/05/1992, by the Indian Air Force to the effect that he may be considered educationally qualified for Group - C posts, where requisite qualification is graduation. The certificates, which were brought on record by way of Annexure - 13 & 14 to the writ application, were issued in the light of Government of India, Ministry of Social Welfare Letter No. F 18-19/75/T-2, dated 26/05/1977, Air HQ Letter No. Air HQ/18976/20/TRG, dated 19/02/1979, and Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) OM No. 15012/8/82/Estt. (D), dated 12/02/1986, respectively.

3. Being an ex-serviceman, the respondent was appointed in Allahabad Bank as Clerk-Cum-Cashier/Clerk-Cum-Typist, on 15/11/1993, on salary of Rs. 1,000/- per month, which included two annual increments for graduation. He was given two annual increments on the date of his appointment on the basis of his claim that he held graduation degree in terms of the two certificates issued by the Indian Air Force. He enjoyed the benefit of two graduate increments accordingly till issuance of a letter, dated 12/10/2000, by the Manager of Allahabad Bank, regional office at Muzaffarpur, addressed to him, informing him that the two graduate increments were not admissible on the basis of the said certificates issued by the Indian Air Force. He was asked to refund the amount already paid to him as graduate increments and it was also indicated therein that the said amount, paid to him, would be deducted from his salary.

4. Aggrieved by the said decision of the Bank, the respondent filed a writ application before this Court under Article 226 of the Constitution of India, seeking quashing of the said letter, dated 12/10/2000. Learned Single Judge, by the order under appeal, allowed the writ application, holding that the decision of the Bank not to grant increments, on the basis of certificates issued by the Indian Air Force, could have prospective effect only and it could not be given retrospective effect. Learned Single Judge, accordingly, quashed the said letter, dated 12/10/2000, on the reasoning that in the absence of any provision in the circular or guideline indicating that it would have retrospective effect, the said circular or guideline could not have been implemented retrospectively. The said decision, dated 26/11/2013, passed by the learned Single Judge, is under appeal herein.

5. Learned counsel, appearing on behalf of the appellant, Allahabad Bank, has drawn our attention to Annexure - 6 of the writ application, issued by the Allahabad Bank, to contend that it was clarified on 22/12/1995 itself that in order to become eligible for graduate increments, an employee must be graduate and an employee's claim for having qualification, as for example, Sergeant Education Course held by the Ministry of Defence and having put in 15 years of service, cannot be treated to be equivalent to that of a graduate for earning the benefits of graduation increments. He has further contended that specific stand had been taken in the counter affidavit, filed by the Bank, that the said letter, dated 22/12/1995, was issued by way of clarification making it thereby clear that for grant of graduation increment, an employee must be a graduate. He has, accordingly, submitted that the learned Single Judge erred in holding that the respondent was entitled for graduate increment, holding the letter issued by the Allahabad Bank, dated 22/12/1995, to have prospective effect as, according to him, it was merely clarifictory. Learned counsel, appearing on behalf of the respondent, on the other hand, has submitted that there is no infirmity in the order passed by the learned Single Judge and has contended that the said circular, dated 22/12/1995, can be applied only to such persons, who were appointed after the said date and will have no application for the persons appointed prior to 22/12/1995 inasmuch as the said decision of the Bank cannot be given retrospective effect.

6. After having heard learned counsel appearing on behalf of the parties and having given anxious consideration to the dispute, we are of the view that there cannot be any controversy over the legal proposition that a circular/guideline/subordinate legislation/legislation comes into effect prospectively unless, otherwise, specifically prescribed. At the same time, it is also trite that the same principle does not apply to an instrument or a document, which is merely clarificatory in nature. The respondent claimed and received graduate increments on the basis of the certificates issued by the Indian Air Force as mentioned above. Learned counsel for the respondent has not been able to satisfy us that the respondent, in fact, held a graduation degree as on the date of his appointment. He has not been able to convince us that the Indian Air Force had any authority to confer degree of graduation on its employees upon completion of 15 years of service in the Force.

7. In our opinion, therefore, the respondent cannot be held to be entitled to graduate increments, when he has not been able to satisfy that he held degree of graduation, as on the date of his appointment or on subsequent date.

8. However, it is manifest from the pleadings on record that said graduate increments were granted to the respondent without any misrepresentation or fraud played on his part. He claimed for graduate increments on the basis of the certificates, granted by the Indian Air Force, which were accepted by the Bank for the purpose of granting increments. In our opinion, therefore, appellant, Allahabad Bank, cannot be permitted to recover the amount already paid to respondent up to 12/10/2000, when the respondent was informed by the Bank that he would not be entitled for the said increments. The respondent, however cannot be held entitled to graduation increments after 12/10/2000 unless he satisfies the Bank that the certificates, issued in his favour by the Indian Air Force, conferred upon him the degree of graduation.

9. The order under appeal, dated 26/11/2013, passed by the learned Single Judge, in C.W.J.C. No. 5587 of 2007, is, therefore, modified to the extent that no recovery shall be made from the salary of the respondent nor any deduction shall be made by the appellant-Bank for recovery of the amount of graduate increments already paid to the respondent up to 12/10/2000. There being nothing on the record to demonstrate to this Court that degree of graduation was, in fact, conferred upon the respondent by virtue of issuance of the certificates by the Indian Air Force, it cannot be said that he held such degree.

10. We, accordingly, observe that if the writ petitioner-respondent approaches, within a period of four weeks from today with all relevant documents, the Deputy General Manager of appellant-Bank with a representation in order to satisfy him that issuance of certificates by the Indian Air Force in his favour amounted to conferring degree of graduation, the Deputy General Manager shall consider and pass a reasoned order thereon within a period of two months thereafter. The order under appeal, dated 26/11/2013, passed by the learned Single Judge, in C.W.J.C. No. 5587 of 2007, stands modified to the extent aforementioned.

11. This appeal is partly allowed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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