

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1714 of 2013

IN

Civil Writ Jurisdiction Case No 4434 of 2005

- =====
1. Rajesh Kumar Sinha S/O Sri Umesh Prasad Resident Of Chandmari Road, Lane No. 7, Near Police Chowki, Kankarbagh, Patna, District Patna.
 2. Md Shakil Ahmad S/O Late Md Izhar Ahmad Resident Of Alba Colony, Near Ranipur Gaon, Via Pethia Bazar, P.S. Phulwari, District Patna.

.... Appellant/s

Versus

1. The State Of Bihar.
2. The Director General-Cum-Inspector General Of Police, Bihar, Patna.
3. The Inspector General of Police (Head Quarter), Bihar, Patna.
4. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
5. The Deputy Inspector General of Police (Administration), Bihar, Patna.
6. The Superintendent of Police (C), Cid, Patna, Bihar.
7. Deepak Kumar S/O Late Brajnandan Prasad Resident Of Mohalla Postal Park, Indira Nagar, Road No. 1, P.S. Kankarbagh, District Patna.

.... Respondent/s

WITH

Letters Patent Appeal No 1336 of 2013

IN

Civil Writ Jurisdiction Case No 4434 of 2005

=====

Neelima Sahay Wife Of S.N. Lal R/O Jagmano Sri Garden B. Block, Flat No.202 Ved Nagar, Patna, P.S. Rupaspur, District - Patna (Bihar)

.... Appellant/s

Versus

1. The State Of Bihar
2. The Director General cum - Inspector General of Police, Patna
3. The Inspector General of Police (Head Quarter), Bihar, Patna
4. The Deputy Inspector General of Police (Personnel), Bihar, Patna
5. The Deputy Inspector General of Police (Administration), Bihar, Patna
6. The Superintendent of Police, (C) C.I.D., Patna, Bihar
7. Dipak Kumar Son Of Late Braj Nandan Prasad Resident Of Mohalla - Postal Park, Indira Nager, Road No. 1, P.S. Kankarbagh, District - Patna

.... Respondent/s

=====

For the Appellant/s : Mr Y V Giri, Sr Advocate
M/s Nikhil Kr Agrawal, Awadhesh Kumar Mishra,
Manoj Prabhakar, Cap B S Mishra, Rakesh Kr, Advs

For the S t a t e : Ms Binita Singh, GP XXXI &
Mr Rewti Kant Raman, AC to GP XXXI

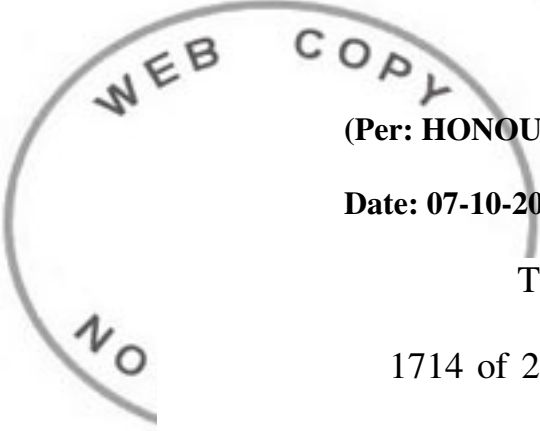
=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 07-10-2015



Three interlocutory applications have been filed in LPA No 1714 of 2013, one seeking leave to appeal against the judgment and order of the learned Single Judge in which the appellants were not parties but orders, adverse to them, were passed, another for condonation of delay in filing the appeal as the appellants were not aware of the writ proceedings or the order passed therein and the third one for stay of the order of the learned Single Judge in so far as it affects them adversely consequently because of the order passed by the authorities pursuant thereto (*Annexure 20 in LPA No 1714 of 2013*) and (*Annexure 12 in LPA No 1336 of 2013*).

2 Heard Mr Y V Giri, Senior Counsel and Mr Awadhesh Kumar Mishra for the appellants and learned counsel for the State and with their consent, these appeals have been heard for its final disposal at this stage itself as both the appeals arise from the same judgment and order of the learned Single Judge and the same order of the Director General of Police.

3 Leave to appeal is allowed. Delay in filing the appeal is condoned.

4 In view of the order we propose to pass, no order need be passed on application for stay of the judgment and order of the learned Single Judge as well as Annexures 20 and 12 respectively in the two appeals.

5 The facts are not in dispute. One Deepak Kumar filed the writ petition being *CWJC No 4434 of 2005* challenging the order of reversion as passed against him from the post of Assistant Sub Inspector to the post of Constable. In the writ petition, in paragraph 10, it had been pleaded that the appellants had similarly been granted promotion several years earlier and, as such, his (Deepak Kumar's) promotion could not be termed as illegal. Upon this and other pleadings, State filed a counter affidavit. In paragraph 14 of the counter affidavit, State pleaded that these appellants, whose names were mentioned in paragraph 12 of the writ petition, were promoted over a decade back and even if it was wrong, it could not be used as a precedent by the writ petitioner.

6 Upon hearing the parties, the learned Single Judge dismissed the writ petition by her judgment and order dated 07.04.2011 but while doing so, in the penultimate paragraph, noted that as the State has admitted in paragraph 14 of the counter affidavit that the promotion of the appellants was illegal, it must necessarily pass similar orders cancelling the promotion of the appellants.

7 Let it be noted that the appellants were never made parties to the writ proceedings, their case were never considered for promotion alongwith the said writ petitioner. In fact, the appellants were promoted in a separate transaction altogether by the Central Range Board which was competent to promote them yet as a consequence of the orders of the learned Single Judge, they were noticed by the authorities and inspite of the fact that they tried to distinguish their case, merely acting on the directions of this Court, their promotions were cancelled. There was no disciplinary proceeding depriving them of their promotion.

8 Shri Giri, learned Senior Counsel submits that the learned Single Judge would not have passed an order adverse to the appellants without appellants being made parties to the proceedings and without the appellants being noticed in that regard.

9 To us, this is an elementary principle of law that no order can be passed to the prejudice of the person without the person being heard. The learned Single Judge left no discretion in the authorities in the matter. Without any adjudication with regard to the facts and circumstances which led to the promotion of the appellants, and without notice to them, the learned Single Judge directed the promotion, granted in a separate transaction years before the writ petitioner's promotion, to be cancelled. This, in our view, would not

have been done. Thus, we are unable to sustain the order of the learned Single Judge in this regard.

10 As noticed above, consequent to the order of the learned Single Judge, the authorities completed the formality by noticing the appellants and without adjudicating upon the facts, simply following the directives of the High Court, cancelled the promotion. This could not be done. Even if the authorities were prima facie of the view that the promotions were wrongly granted, there had to be an adjudication in accordance with the procedure established by law. It had to be either a disciplinary proceeding or at least a proceeding in consonance with principles of natural justice.

11 Thus, the impugned order being order of the Director General of Police in pursuant to orders passed by this Court in *CWJC No 4434 of 2005* communicated vide *Memo No 242 dated 28.02.2013* is set aside and the appellants' position would be restored with all consequential benefits.

12 These appeals are, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

U			
---	--	--	--