IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1450 of 2012
IN
Civil Writ Jurisdiction Case No. 4200 of 2007

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1. The State of Bihar
2. The Secretary, Rural Development Department, Govt. Of Bihar, Patna
3. The Engineer-In-Chief, Rural Engineering Organization, Rural Development Department, Govt. Of Bihar, Visheshwaraiya Bhawan, Patna
4. The Chief Engineer, Rural Engineering Organization No. -2, Rural Development Department, Govt. Of Bihar, Visheshwaraiya Bhawan, Patna
5. The Superintending Engineering, Rural Engineering Organization, Works Circle, Darbhanga
6. The Executive Engineer, Rural Engineering Organization, Works Division, Begusarai, District - Begusarai
7. The Executive Engineer, Rural Engineering Organization, Works Division, Rosra and District - Samastipur

.... Appellants

Versus

Umesh Prasad Singh, son of Late Ram Ujagar Singh, resident of village - Ratauli, P.O.- Binodpur, P.S. - Begusarai Mufassil, District – Begusarai, at present posted as Correspondence Clerk, Rural Engineering Organization, Works Division, Rosra, District – Samastipur.

.... Respondents

With

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Letters Patent Appeal No. 994 of 2013
IN
Civil Writ Jurisdiction Case No. 7818 of 2005

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1. The State of Bihar
2. The Secretary, Rural Development Department, Govt. of Bihar, Patna
3. The Engineer-In-Chief, Rural Engineering Organization, Rural Development Department, Govt. of Bihar Vishwesharaiya Bhawan, Patna
4. The Chief Engineer, Rural Engineering Organization - II, Rural Development Department, Govt. of Bihar, Vishwesharaiya Bhawan, Patna
5. The Superintending Engineer, Rural Engineering Organization, Works Circle, Darbhanga

6. The Executive Engineer, Rural Engineering Organization, Works Division, Begusarai, District - Begusarai
7. The Executive Engineer, Rural Engineering Organization , Works Division, Rosera, District - Samastipur

.... Appellants

Versus

Rajendra Prasad Singh, son of Late Sundar Singh Resident of Village - Bhairwar, Police Station - Begusarai Mufassil, District – Begusarai.

.... Respondents

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Appearance :
(In LPA No. 1450 of 2012)
For the Appellant/s : Mr. Prabhat Kumar, AC to GA 2
For the Respondent/s : Mr. Lalan Kr. Singh, Advocate
(In LPA No. 994 of 2013)
For the Appellant/s : Mr. Udai Shankar Singh, Advocate
For the Respondent/s : Mr. Lalan Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 20-08-2015

Delay in filing the memo of appeal is condoned.

2. These two Intra-Court Appeals filed by the State is against the judgment and order of the learned Single Judge, whereby the learned Single Judge has set aside the order of the Department, by which the time bound promotion granted to the petitioners after granting exemption was cancelled and recovery had been ordered. The learned Single Judge has correctly appreciated the fact and the law.

3. The Government came up with a scheme for granting time bound promotion which was an anti-stagnation scheme, where people, who are, otherwise, fit for promotion, but could not get promotion for lack of promotional avenue were granted increase in pay by one scale on expiry of fixed period of time. Underlying condition being fit for promotion. This is envisaged in terms of a departmental examination which they have to pass. Unless a person passes the departmental examination, as held by this Court in case of **Daya Shankar Singh vs. State of Bihar** since reported in **2010(3) PLJR 220**; is not entitled to be considered for grant of time bound promotion. There is an exception to that. Persons who have attempted to departmental examinations and have failed or on their attaining the age of 50 years, they could be under those circumstances exempted from departmental examination. Petitioners' case was that they had attempted departmental examinations in Accounts, but, had failed in one or the other paper. After they attained the age of 50 years, after due consideration, they were granted exemption and consequently granted time bound promotion, though, the exemption being prospective. It was granted in the year 2006, instead of 1999. Now, the Department is of the view that they having failed in departmental examination they could not be granted either exemption or granted time bound promotion.

4. The discretion in granting exemption from departmental examination was wrongly exercised. It should not have been exercised in that manner.

5. In our view, the entire approach of the State resolves on the facts as noted above. In our view, the writ petitioners having attempted the examination and failed in one or the other paper, having attained the age of 50 years in the year 1999, they were entitled to exemption. The expression 'may grant exemption' is discretionary, but discretion is not the sweet-will of an officer. In this case, we may refer to the judgment of the Apex Court in the case of **Hirday Narain Vs. Income Tax Officer, Bareilly** since reported in **AIR 1971 SC 33**; wherein it has been held in paragraph 13 which reads as such:

> ***"13.*** *In Julius v. Bishop of Oxford, (1880) 5 AC 214 it was observed by Cairns L.C. at pp. 222-223 that the words "it shall be lawful" conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing*

empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so." Lord Blackburn observed in the same case at pp. 244-245 that the enabling words give a power which prima facie might be exercised or not, but if the object for which the power is conferred is for the purpose of effectuating a right there may be a duty case upon the donee of the power to exercise it for the benefit of whose who have that right when required on their behalf. Lord Penzance and Lord Selborne made similar observations at pp. 229 and 235."

6. In that case for interpretation was a provision of Income Tax Act, which authorized the Income Tax Officer that he may, on an application of the assessee or otherwise, rectify a mistake. The Income Tax Officer took stand that the power was totally discretionary, he may or he may not. The Apex Court turned down the plea and held that, if circumstances existed for exercise of discretion in a particular manner, then, there was a duty casted to exercise, there was no discretion left.

7. The exemption having been validly granted, but from prospective date. Though, the writ petitioners are not in appeal, we would clarify that they would get this exemption from the date they attain the age of 50 years, otherwise, there is no interference in the order of learned Single Judge.

8. If the benefit under the time bound promotion was withdrawn and any amount recovered the same would be forthwith returned.

9. These Intra Court Appeals merit no consideration. They are, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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