IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5998 of 2008

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Krishna Kumar Singh son of Late Akalu Singh, resident of New Patliputra Colony, P.O. & P.S. Patliputra Colony, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Member, Board of Revenue, Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
4. The Finance Commissioner cum Principal Secretary, Government of Bihar, Patna.
5. The Commissioner of Commercial Taxes cum Principal Secretary, Government of Bihar, Patna.

.... Respondents

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Appearance :
For the Petitioner : Mr. Ashish Giri
For the Respondents : Mr. Ajay Kr. Sharma, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 12-03-2015

Heard Sri Ashish Giri, learned counsel for the petitioner and Sri Ajay Kumar Sharma, learned A.C. to Principal Addl. Advocate General.

The petitioner, who superannuated w.e.f. 31st August, 2007 as Additional Commissioner, Commercial Taxes, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India with a prayer to quash an order contained in Memo No. 850 dated 30-01-2008 passed by the Finance Commissioner, which was passed on representation filed by the petitioner. The petitioner had filed representation, in view of Division Bench order passed on 23-08-2007 in L.P.A. No. 406 of 2007. The petitioner had claimed that being senior-most Joint Commissioner in the Finance Department, he was entitled to be promoted as Additional Commissioner w.e.f. 12-04-2002.

This is the third time by the petitioner in approaching this Court for the relief sought for in the present writ petition. Earlier, the petitioner had filed a writ petition for granting him promotion as Additional Commissioner w.e.f. 12-04-2002, vide C.W.J.C. No. 5306 of 2005. The said writ petition was disposed of by a detailed order granting liberty to the petitioner to file an appropriate representation. However, dissatisfied with the order of the single bench, the petitioner filed an appeal vide L.P.A. No. 406 of 2007, which too was disposed of almost following the observation of the single bench with liberty to file representation before the Finance Commissioner and thereafter, the Finance Commissioner was directed to consider the representation and dispose it of after hearing the parties in accordance with law. Thereafter, representation was filed by the petitioner and by the impugned order i.e. order dated 30-01-2008 (**Annexure '25'** to the writ petition), the representation of the petitioner was rejected, which has been assailed in the present writ petition with consequential relief.

Sri Ashish Giri, learned counsel for the petitioner, while assailing the impugned order, submits that at the time of bifurcation of State of Jharkhand from State of Bihar, two posts of Additional Commissioner were available, one was ear-marked for promotion from the cadre post and another by ex-cadre post. He submits that after bifurcation, one post of Additional Commissioner was given to the state of Jharkhand and one post remained in the state of Bihar. Since the petitioner was senior-most as Joint Commissioner, he was entitled to be given the post of Additional Commissioner, but for one post, there was no provision to allocate the same to ex-cadre post. However, in illegal manner, one officer from Indian Administrative Service, namely; Smt. Harjot Kaur Bamhrah was given the post of Additional Commissioner. Learned counsel for the petitioner, referring to a Government resolution dated 20th January, 1990 (**Annexure '3'** to the writ petition) submits that the State Govt. had resolved to grant promotion to the post of Additional Commissioner from the officers of the cadre post, which was reiterated by the Government, vide **Annexure '4'** to the writ petition i.e. Notification dated 20-06-1994. He has also relied on Rule 39(A) of Bihar Finance Service Rules, 1953 to substantiate his submission that once only one post of Additional

Commissioner remained vacant, the petitioner being senior-most officer in the same cadre was required to be considered for promotion to the post of Additional Commissioner, which has not been done and as such, the decision taken by the Finance Commissioner, vide **Annexure '25'** to the writ petition, is liable to be set-aside. He further submits that ofcourse against the post of Additional Commissioner, one I.A.S. officer was deputed, which was also contrary to the instructions and rules issued by the State Govt. Accordingly, he has prayed for setting aside the impugned order.

Sri Ajay Kumar Sharma, learned A.C. to Principal Addl. Advocate General has opposed the prayer of the petitioner. By way of referring to statement made in paragraph 9 and 10 to the counter affidavit filed on behalf of respondent no. 5, he submits that at the time of bifurcation, there were two posts of Additional Commissioner, one was for cadre post and the other was for ex-cadre post. In the cadre post, the petitioner was not senior-most, but above him there was one another officer, namely; Sri J.K.Das. After bifurcation of the State, Sri J.K.Das was allocated the Jharkhand cadre. however; he remained as Joint Commissioner in the state of Bihar till 16-09-2003. After bifurcation, Sri J.K.Das was promoted as Additional

Commissioner by the State of Jharkhand and at the same time, since only one post of Additional Commissioner remained within the state, the said post was filled-up by an officer from the I.A.S. cadre, namely; Smt. Harjot Kaur Bamhrah. She was appointed as Additional Commissioner on 10-12-2003 and she remained on the said post till 16-10-2005. During the said period, there was no vacant post of Additional Commissioner, Commercial Taxes for Bihar Finance Service Cadre. He further submits that subsequently in the State of Bihar, five posts of Additional Commissioner were created and thereafter, the petitioner's case was considered and he was promoted as Additional Commissioner, vide Notification No. 2395 dated 17-06-2006 (**Annexure 'B'** to the counter affidavit). According to learned counsel for the State since earlier no post of Additional Commissioner from amongst the cadre was available, the petitioner was not given promotion as Additional Commissioner and the Finance Commissioner by the impugned order i.e. order dated 30-01-2008 has rightly rejected the claim of the petitioner assigning detail reason.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Before delving into the matter, the Court proposes to quote observation of the Single Bench, which was recorded on 29.3.2007 in C.W.J.C. No. 5306 of 2005 earlier filed by the petitioner. This Court proposes to quote paragraph – 7 of the order of the Single Bench, which is as follows:-

> **"This, however, does not conclude the matter. As stated hereinabove, the lawfully entitled person has to be given the post of Additional Commissioner from the date the post fell vacant, provided the claimant was qualified to hold the post from that date. Learned Government Counsel has rightly relied on notification no.137 dt. 20.4.2005 (Annexure 7), whereby the petitioner was promoted from his previous post of Joint Commissioner to the next higher post of Senior Joint Commissioner with effect from the date of the order. vide order dated 20.4.2005 (Annexure 7). It is thus manifest that the petitioner could not have been promoted to the post of Additional Commissioner upto 20.4.2005."**

Ofcourse, against the order of the writ court, the petitioner had preferred an appeal, but the learned Division Bench did not interfere with the order of the Single Judge and disposed of the appeal with a direction to the Finance Commissioner to examine the representation of the petitioner and pass an appropriate order. Ofcourse, while directing for considering the representation, the Division Bench recorded that observation of the learned Single Judge on merit may not come in the way of Finance Commissioner to decide the claim of the appellant (petitioner) in accordance with law. The

Division Bench order has been brought on record as **Annexure '22'** to the writ petition. After the order of the Division Bench, the representation of the petitioner was considered by the Finance Commissioner and by assigning detailed reason and considering the fact that post of Additional Commissioner from the cadre of the Finance Department was not available the petitioner was rightly not given promotion as Additional Commissioner, as claimed by the petitioner. So far as **Annexure '4'** is concerned i.e. Notification dated 20-06-1994, it is evident that two posts of Additional Commissioner were available, one was to be filled up from the cadre post and one was from ex-cadre post. It is also evident that till the date of bifurcation, only two posts of Additional Commissioner were available and after bifurcation, one post was given to the State of Jharkhand and only one post remained in the State of Bihar.

From the materials available on record as well as order of the learned Single Judge passed on 29.3.2007 in C.W.J.C. No. 5306 of 2005, the Court is of the opinion that the present dispute was already set at rest. It is evident that for some time as adhoc arrangement, the post of Additional Commissioner was filled-up by Smt. Harjot Kaur Bamhrah. Ofcourse, the petitioner has claimed that the said post was incorrectly and illegally filled-up by the officer from the I.A.S. cadre namely Smt. Harjot Kaur Bamhrah instead of giving promotion to the petitioner, the petitioner has not bothered to implead Smt. Harjot Kaur Bamhrah as party in the present writ petition. It is also admitted that the petitioner was subsequently given promotion to the post of Additional Commissioner after five posts of Additional Commissioner were created and holding the said post, the petitioner finally superannuated w.e.f. 31-08-2007.

In view of the facts and circumstances, particularly; the fact that at the relevant time, the post of Additional Commissioner was not available from the cadre post, I do not find any error in the order of the Finance Commissioner i.e. **Annexure '25'** to the writ petition.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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