

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1693 of 2013

IN

Civil Writ Jurisdiction Case No. 9671 of 2006

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Ram Bhajan Yadav

.... Appellant

Versus

The State of Bihar & Ors.

.... Respondents

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Appearance :

For the Appellant

: Mr. Rajendra Prasad Singh, Sr. Adv. with
M/S Raj Kumar Mishra, Pramod Kumar &
Ritesh Kumar, Advs.

For the Respondent

: Mr. Avnish Nandan Sinha, G.P. XI

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-01-2015

This Letters Patent Appeal has been filed against the order, dated 27.08.2010, passed in C.W.J.C. No. 9671 of 2006 through which the writ was dismissed. The appellant filed the writ petition, with a prayer to quash the order vide Memo No. 545, dated 14.02.2006, issued by respondent no. 5, Civil Surgeon-cum-Chief Medical Officer, Darbhanga. Through the said order, the appellant was reverted to post of Basic Health Worker, from the post of Clerk. Direction was issued to recover the excess amount received as salary for the promoted post. Reference was made to the direction issued by the Director-in-Chief, Health Services, said to be in compliance of the order, dated 07.07.2005, passed in L.P.A. No. 448 of 2005.

2. The case of the appellant is that he was appointed as Basic Health Worker vide order, dated 18.02.1976, and jointed duty on 23.02.1976. He got a pain in the abdomen and had to undergo surgery of his kidney and thereby he was advised by the Doctors, to work in office, and not at the field, to avoid jerk. On the

representation of the appellant, the respondent no. 6 passed order, dated 31.04.1990, deputing the appellant for office work in the block head quarter Jaley, Darbhanga. While working at that place, the appellant filed representation as regards promotion.

3. A notification was published by the Government in 1993 to the effect that an employee who is affected by the kidney problem will not be disturbed from any station, on transfer, or promotion to next post. The appellant was promoted by respondent no. 5 to the post of Store Keeper from the post of Basic Health Worker and, accordingly, he joined on 01.02.1996. Thereafter, in 2004 the appellant was required to discharge his duty as Clerk, in the office of respondent no. 5. However, through order, dated 18.10.2012 the appellant was reverted from the post of Clerk to Basic Health Worker. Recovery of difference of pay was ordered vide Memo No. 545, dated 14.02.2006.

4. The appellant filed the writ petition challenging the said orders. The learned single Judge rejected the writ petition, in view of the orders passed in L.P.A. No. 448 of 2005 (Arvind Kumar Yadav Vrs. State of Bihar).

5. The learned counsel for the appellant submits that his client was not a party to L.P.A. No. 448 of 2005 and no notice was issued to the appellant before he was reverted from the post of Clerk to his basic post. He contends that the impugned order has been passed in violation of principles of natural justice. It has also been asserted that his case is not covered by the decision in L.P.A. No. 448 of 2005.

6. The brief service particulars of the appellant have been furnished in the preceding paragraphs. On account of the illness suffered by him, he was put on a different rank which is fairly less

onerous. Thereafter, he has also earned promotion.

7. In case respondents are of the view that the appellant was not entitled for any promotion or change of channel, they ought to have issued notice to him and taken appropriate action in accordance with law. Except that the judgment in L.P.A. No. 448 of 2005 was cited, the respondents did not indicate any reasons for reverting the appellant.

8. When no reasons are not mentioned in the impugned proceedings and no notice was issued to the appellant, the order of reversion cannot be sustained in law. On the short ground that the proceedings are violative of principles of natural justice, we allow this Letters Patent Appeal, and set aside the order passed by the learned single Judge in the writ petition. As a result, writ petition is **allowed** and the order challenged therein is **set aside**.

9. The respondents shall continue the appellant in the post in which he was working before the order of reversion was passed. It is, however, left open to them to pass appropriate order in accordance with law after the restoration of the appellant to the concerned post.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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