

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1428 of 2014

IN

Civil Writ Jurisdiction Case No. 15539 of 2012

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1. Rajendra Singh Son of Late Sipahi Singh Resident of Village - Parsadi English,
P.O. - Parsadi English, P.S. - Arwal, District - Arwal.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department,
Government of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Bihar, Patna.
3. The Chief Engineer, Sone Nahar, Water Resources Department, Bihar, Patna.
4. The Executive Engineer, Sone Nahar Pramandal , Khagaul, Patna.
5. Sub Divisional Officer, Sone Canal Division, Arwal.
6. The Junior Engineer, Sone Cana Sub Division, Arwal.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Chandra Jha-3

For the Respondent/s : Mr. SC16- ABBAS HAIDAR

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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: 07-08-2015

1. The appellant's father, while working as Peon in the Sone Canal Division, Arwal, under the Water Resources Department, Government of Bihar, died, in *harness*, on 15.04.2007. The appellant filed, on 04.08.2008, an application before competent authority for his appointment on *compassionate ground*. Since no final decision was taken by the respondents upon his application for appointment on *compassionate ground*, the appellant preferred a writ application, under Article 226 of the Constitution of India, giving rise to CWJC

No. 15539 of 2012 (Rajendra Singh Vs. State of Bihar & ors).

2. A learned Single Judge of this Court has dismissed the said writ application by order, dated 18.12.2013, on two grounds. Firstly, as on the date of order, dated 18.12.2013, the appellant did not possess the very basic qualification prescribed even for Class IV (Group-D) post inasmuch as the minimum educational qualification, prescribed for Group-D post, is 10th Class pass; whereas the appellant did not, admittedly, have such a qualification. Secondly, the learned Single Judge has held that the petitioner was not qualified to be considered for appointment as he had crossed the maximum age criteria fixed for such an appointment.

3. The present *intra* Court appeal under Clause 10 of the Letters Patent of the Patna High Court has been preferred against the said order of the learned Single Judge passed, on 18.12.2013, in CWJC No. 15539 of 2012 (*supra*).

4. Learned counsel, appearing on behalf of the appellant, has made very short submission to the effect that the appellant's eligibility for the purpose of his appointment on *compassionate ground* was required to be considered on the basis of the law as it existed on the date of his application for such appointment and subsequent change, if any, in the rules of appointment, could not have taken away his right to be considered, for, the delay in taking

decision on the petitioner's appointment was solely attributable to the State respondents. He has contended that this has been consistent view of this Court and has relied upon, in this regard, the following decisions, which were not noticed by learned Single Judge:-

(1) 2005(2) PLJR 511 (*Parmanand Sah Vs. State of Bihar*)

(2) 2007 (Supp.) PLJR 234(*Triveni Devi vs. State of Bihar*)

(3) 2010(1) PLJR 187 (*Shyama Kumari Vs. State of Bihar*)

5. No dispute has been raised by the Respondents State of Bihar over the fact that the appellant had applied for his appointment on *compassionate ground* on 04.08.2008, consequent upon the death of his father on 15.04.2007. The plea on behalf of the appellant that as on the date of filing of application by the petitioner on 04.08.2008, "8th Class pass" was the minimum educational qualification for appointment against Group-D post has also not been denied. Our attention has been drawn to Bihar Group-D (Recruitment & Service Conditions) Rules, 2009 (hereinafter referred to as the Rules), in Secretariat Department and Mufassil Offices, framed under Article 309 of the Constitution of India. Clause 3(1) of the Rules lays down the qualification for appointment against Group-D posts. The said rules were published in Bihar Gazette (extraordinary) on 29.03.2010. A bare reading of the said 2009 Rules will show that initially, "10th Class pass" was not the minimum educational qualification



prescribed for appointment against Group-D post. The Rules came to be amended through Bihar Group-D (Recruitment & Service Conditions) Amendment Rules, 2012, which were notified on 12.12.2012, enhancing the minimum educational qualification for Group-D post to Class 10th (Matric) pass. Evidently, prior to 12.12.2012, minimum educational qualification prescribed for appointment on Class-D post was Class-8th pass.

6. Thus, from the date when the appellant had applied for appointment on *compassionate ground* on 04.08.2008 till amendments in Bihar Group-D (Recruitment & Service Conditions) Rules, 2009, with effect from 12.12.2012, Class-8th pass was the minimum educational qualification for appointment to a Class-D post. Our attention has also been drawn to a notification issued by the General Administration Department, Government of Bihar, dated 26.12.2013, wherein, by way of clarification, it came to be notified that minimum educational qualification for appointment to Class IV post from the date of coming into force of the Rules till the amendment in the Rule with effect from to 12.12.2012 remained Class-8th pass.

7. The only question, which has emerged, thus, in the present appeal, is as to whether the appellant could have been denied consideration of his claim for appointment on *compassionate ground* consequent upon the amendment in the rules laying down enhanced

educational qualification for to appointment to Group-D post, which is the lowest rung in the service of State Government.

8. In our opinion, appellant's right to be considered for his appointment on compassionate ground accrued on the date, when the appellant filed his application for appointment on compassionate ground, consequent upon the death of his father in harness. The eligibility of a candidate for appointment to a post is to be determined on the basis of law as existing on the date of his application. In our considered view, the appellant's right to be considered for his appointment on compassionate ground on the date when he filed his application for the said purpose as on 04.08.2008 cannot be taken away by subsequently framed rules or amendment in the relevant rules.

9. We are in full agreement with the views taken by this Court in case of *Permanand Sah Vs. State of Bihar and others (supra)* and *Triveni Devi Vs. State of Bihar and others (supra)*. The view taken by this Court, in case of *Shyama Kumari Vs. State of Bihar and others (supra)*, in our opinion, is the correct view that raising of requisite educational qualification, subsequent to filing of application, for appointment on *compassionate ground*, would not debar a claimant from getting appointment on *compassionate ground*.

10. We find sufficient force in the submissions made on

behalf of the appellant that the claim of the appellant to be appointed on *compassionate ground* is to be considered with reference to the date on which his father died or, on the worst, on the date he filed the application for appointment on *compassionate ground*.

11. In our opinion, if a person had a right to be considered for appointment on *compassionate ground* and he applied for such appointment, his eligibility has to be tested on the basis of the law existing on the date of his application and subsequent amendment, prescribing enhanced educational qualification or change in other eligibility criteria will not render him unsuitable for being considered for such appointment.

12. In view of the discussion as above, we hold that in the matters of appointment on compassionate grounds, the eligibility of a person, seeking such appointment, shall be tested on the basis of the eligibility criteria under the law as existing on the date of such application. Subsequent change in the eligibility criteria will not take away such person's claim to be considered for appointment on compassionate ground.

13. The order under appeal passed by the learned Single Judge dated 18.12.2013 in CWJC No. 15539 of 2012, therefore, needs interference and is, accordingly, set aside.

14. The respondents are directed to take a final decision on

the application of the appellant for his appointment on compassionate ground within a period of three months from the date of receipt/production of a copy of this order. CWJC No. 15539 of 2012 stands allowed to this extent.

12. This appeal is, accordingly, allowed.

13. There shall, however, be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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