IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4579 of 2015

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1. The Union of India through the D.G. - cum - Secretary, Department of Posts, Dak Bhawan, New Delhi
2. The Chief Post Master General, Bihar Circle, Patna
3. The Director Accounts (Postal) G.P.O. Complex, Patna
4. The Superintendent of Post offices, Bhojpur Division, Arrah

.... Petitioner/s

Versus

1. Sheojee Singh Son of Late Ambika Singh resident of village - Siaruan, Police Station - Jagdishpur, District - Bhojpur (Arrah)

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar(ASG)
For the Respondent/s : Mr.

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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: 08-09-2015

The Union of India has filed this writ petition, challenging the judgment and order dated 18-2-2014 passed by the Central Administrative Tribunal, Patna Bench, Patna , in O.A. No. 05 of 2014, whereby the application of the sole contesting respondent, who has appeared, has been allowed, and it has been directed by the Tribunal that the case of the sole contesting respondent Sheojee Singh be considered for grant of pensionary benefits, treating him to have completed ten years of service as Group 'D' permanent employee.

2. Having heard the parties, we have no reason to take a different view of the matter.

3. The contesting respondent was a Gramin Dak Sevak, and as such not a permanent employee of the Postal Department. Under the Scheme formulated by the Department from time to time, Gramin Dak Sevaks were

absorbed as permanent Group ‘D’ employees. This is done when they are of the age of about 50 years. In the case of the contesting respondent the process of regularization in Class ‘D’ position was taken up, but it got delayed by a few months by the Department. The contesting respondent was neither responsible for the delay nor the delay could be attributed to him in any manner. The consequence was that instead of being absorbed as Group ‘D’ employee at the age of 50 years, giving him ten years of further service and entitling him to pension, he was short of ten years of qualifying service by couple of months. Being short of ten years of qualifying service, he was being denied pensionary benefits. That is what was disapproved by the Tribunal. In addition to what the Tribunal had said, we would add more things in support of the order. Firstly, the Department being in default, it cannot take advantage of its own default to deny the right to the contesting respondent. All we can do is to quote what Chief Justice Chagla said in the case of All India Groundnut Syndicate Ltd. Vs. I. T. Commr. Bombay(A.I.R. 1954 Bombay 232) :-

> “ But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section(2) of S.24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income-tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “ I have committed a default and the right is lost because of that default”

4. Secondly, if we refer to Rule 88 of CCS(Pension) Rules, it gives authority to the Department to make regularization in case of individual difficulties. This, in our view, is a fit case in which the power ought to have been exercised. We may further add that the Department cannot take the plea that Rule

88 is purely discretionary. The use of expression 'may' really does not give any discretion to the authorities in the matter. It has been settled by the decisions of the Apex Court, including the decision in L. Hirday Narain Vs. Income Tax Officer[A.I.R. 1971(S.C.) 33] that wherever the expression 'may' is used and public duty is cast, if the facts so disclosed, the authority cannot refuse to exercise the power. The expression 'may' would then be imperative 'shall'.

5. Thus, we find no merit in this writ petition. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

BK.Roy/-

(Nilu Agrawal, J)

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