

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25376 of 2013

Satish Kumar Singh, son of Sri Samta Prasad Singh, resident of Bundel Toli, P.O. Patna City, P.S. Malsalami, District-Patna, presently posted as S.S.A. (Social Security Assistant) in the office of Employees Provident Fund Organization, Regional Office, Patna.

.... Petitioner.

Versus

1. The Union of India through Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110066.
2. Additional Central Provident Fund Commissioner (U.P. & Bihar), Bhavishya Nidhi Bhawan, Sarvodaya Nagar, Kanpur-208005.
3. Regional Provident Fund Commissioner, Bhavishya Nidhi Bhawan, R-Block, Road No.6, Near M.L.A. Flate, Patna-800001.
4. Assistant Provident Fund Commissioner, Bhavishya Nidhi Bhawan, R-Block, Road No.6, Near M.L.A. Flate, Patna-800001.

.... Respondents.

Appearance :

For the Petitioner : Mr. Rajesh Prasad Choudhary, Advocate.

For the Respondents : Mr. Prashant Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 23-07-2015

Mere persistence of a litigant does not make his cause or the relief better and better. The litigant is free to approach a Court but the Court has to decide whether any serious right has been created in his favour or not.

2. Petitioner had earlier gone before the Central Administrative Tribunal, Patna, seeking direction for his absorption on permanent basis as a Data Entry Operator under the respondent, Regional Provident Fund Commissioner. He claimed that he was

made to work as a Data Entry Operator and acquired the proficiency. His name was also recommended, therefore, he was entitled for such direction or relief.

3. In O.A. No.319 of 2007, an order in favour of the petitioner was passed on 10th July, 2009, giving direction for consideration for regularization. The matter did not rest at that because the respondent authorities moved the High Court by filing C.W.J.C. No.14895 of 2009. Various submissions were considered and the writ application was disposed of by a Division Bench directing the authorities to consider the claim of the petitioner if it finds favour with them within the parameters of the rules.

4. The order dated 28.05.2010, as contained in Annexure- '8' is the culmination of the reasons on which the claim of the petitioner for absorption has been rejected.

5. Petitioner assailed Annexure- '8' by filing yet another O.A. This O.A. was registered as O.A. No.427 of 2010. The Tribunal rejected the claim of the petitioner vide order dated 14th March, 2013 and, therefore, the writ application has been filed seeking quashing of the said order.

6. Counsel for the petitioner submits that the petitioner was made to work as a Data Entry Operator. Discrimination has been practiced by the respondent authorities by giving waiver with regard

to qualification and he had a right for consideration, in the given facts, which have been dealt with both in the previous order of the Tribunal as well as previous Division Bench Decision.

7. So far as the first order of the Tribunal is concerned, the Member of the Tribunal seems to have been carried away by the facts that the petitioner was already a regular employee working as a LDC and work was being taken from him as a Data Entry Operator on deputation. Therefore, he had the requisite experience for regularizations or absorption on that post. The High Court in the writ application had taken into consideration the reasoning but has also found that the petitioner did not have requisite qualification to go with the appointment or absorption on such post. However, the authorities were left with the option of considering, granting him one time exemption or considering his past service as a ground for regularization.

8. The Court has examined not only Annexure-‘8’, which is the order of rejection but even the order passed in O.A. Nos.427 of 2010 and 319 of 2007. The Court fails to understand the conduct of the petitioner by being persistent with the litigation for the reason that in the year 2005, his deputation stood cancelled and he was promoted to the post of Social Security Assistant, which is at par the post of UDC. He has been working on that post for the last 10 years and has

not worked as a Data Entry Operator for the last 10 years. After termination of his deputation, he was promoted and such decision of the respondents was accepted by the petitioner with open eyes. With this kind of facts, coupled with the fact that the petitioner did not have requisite qualification for the same said post and the so-called alleged discrimination has been denied and satisfactorily explained by the respondents, in the counter affidavit, no case for consideration is made out.

9. The Tribunal has rightly held that the applicant has accepted the promotion to the next higher post and has been availing its benefit since 2005 and is still pursuing litigation after litigation as if the Tribunal had no business except hearing the case of a person who does not have any legal claim or basic suitability.

10. In view of the above, this writ application is required to be dismissed. No interference is warranted in the Tribunal's decision.

(Ajay Kumar Tripathi, J)

(Rajendra Kumar Mishra, J)

P.S./-

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