

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.854 of 2012

IN

Civil Writ Jurisdiction Case No. 10126 of 2005

- =====
1. Patna University through its Registrar, Ashok Rajpath, Patna- 800005
 2. Vice Chancellor, Patna University, Ashok Rajpath, Patna- 800005
 3. Registrar, Patna University, Ashok Rajpath, Patna- 800005

.... Appellants

Versus

1. Madan Kumar Pandey, Son of Late Kapildeo Pandey, Resident of Mohalla Bihari Sao Lane, Police Station Pirbahore, District Patna
2. The Principal, Bihar National College, Ashok Rajpath, Patna- 800005

.... Respondents

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Appearance :

For the Appellants : Shri A.K. Keshri, Sr. Adv.

For the Respondents : Shri Amit Prakash, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-01-2015

Respondents 1 to 3 in C.W.J.C. No.10126/05

are the appellants herein. They feel aggrieved by the order dated 21.1.2011, passed by the learned single Judge in the above writ petition. The facts are as under:

The 1st respondent was appointed as a Laboratory bearer, by the Principal of the Bihar National College, Patna, the 2nd respondent herein, in the year 1973. It is stated that the 2nd respondent passed an order on 14.3.1984 requiring the 1st respondent to discharge the functions of a Class-3 employee by granting allowances of



Rs.50 per month. 1st respondent is said to have passed the Matriculation examination in the year 1990 and Intermediate in the year 2013. The respondent filed the writ petition with a prayer to direct the appellants herein to regularly promote him to the post of a Class-3 employee i.e. Clerk and to pay him the back wages from the date that he was promoted.

The appellants filed a counter affidavit opposing the writ petition. According to them, the 2nd respondent i.e. the Principal does not have the authority to appoint or to upgrade the 1st respondent and the question of promoting him to a higher post does not arise. It was also pleaded that by the time the writ petition was filed, the petitioner was only a Matriculate. He has passed the Intermediate examination only in the year 2013.

Learned single Judge allowed the writ petition and directed the appellants herein to grant higher pay-scale and pay the arrears of salary for the entire period within six months. At the same time, he directed them to consider the claim for promotion to a Class-3 post after verification of the qualifications. Hence, this Letters Patent Appeal.

Heard Shri A.K. Keshari, learned Senior

Counsel for the petitioner, and Shri Amit Prakash, learned counsel for the respondents.

The appellants raise an objection as to the very manner of the appointment of the 1st respondent. Even according to the 1st respondent, his appointment was made by the 2nd respondent i.e. the Principal of the college. It is not in dispute that the college is not an independent unit and it is part of the University. The competent authority to appoint any person in the University is only the Registrar and not the Principals of the respective colleges. However, we do not intend to take that controversy beyond that point. Admittedly, the 1st respondent was working in the college for the past about four decades. It is too late in the day, to doubt the very appointment when the appellants themselves have continued him and are paying the salary.

The main issue is about the promotion of the respondent the post of Class 3. The 1st respondent placed reliance upon an order dated 14.3.1984, said to have been passed by the Principal of the college, i.e. 2nd respondent. We find it difficult to treat the same as an order of promotion. He was just required to discharge the functions which are referable to a Class-3 post by offering an allowance of Rs.50. The same arrangement continued till



now. It is not even his case that the regular duties attached to the post of a Class-3 employee were entrusted to him. Further, the qualification which was required for a Class-3 employee was Matriculate in the year 1990 and recently it was enhanced up to Intermediate. By the time the writ petition was filed, the required qualification was Intermediate. Obviously, for that reason the learned single Judge wanted the appellants to verify the eligibility of the 1st respondent before promoting him to a Class-3 post. Further, at the same time a direction was issued for payment of the higher emoluments allotted to the post of Class-3. We find it difficult to reconcile these two extremisms.

It is brought to our notice that during the pendency of the proceedings the 1st respondent has acquired the qualification of Intermediate which, in turn, is the qualification prescribed for Class-3.

In the totality of the circumstances, we modify the order passed by the learned single Judge to the effect that the 1st respondent shall be deemed to have been promoted to the post of Class-3 with effect from 1.10.2013 and he shall be treated as such. The differential amount on the pay-scale attached to the Class-3 shall be paid to him

within a period of three months.

It is reported that the 1st respondent has been reverted to the Class-4 post. In view of the order passed by us, the same shall stand set aside.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

K.C.jha/-

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