IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8147 of 2014

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1. Rabindra Singh Son of Late Lallan Singh Resident of Village - Khawaspur Bhawan Tola, P.S. Khawaspur, District - Bhojpur at Ara

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Finance, (Commercial Tax) Department, Govt. of Bihar, Patna
3. The Under Secretary, Commercial Taxes Department, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Rajeev Kumar Singh, Adv.
Mr. Mukesh Kumar Singh, Adv.

For the Respondent/s : Mr. Gautam Bose, AAG-8
Mr. Ajay Kumar, A.C. to AAG-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

4 09-02-2015 Heard Mr. Rajendra Prasad Singh learned Senior counsel for the petitioner and Mr. Gautam Bose, learned AAG- 8 for the State.

The petitioner an ex officer of the Commercial Taxes Department has prayed for a direction to the respondents to allow him to continue as Member of the Commercial Taxes Tribunal for a period of three years from the date of the notification appointing him as such bearing No. 4443 dated 10.12.2013, a copy of which is placed at Annexure-6.

Mr. Rajendra Prasad Singh learned Senior counsel for the petitioner has with reference to the provisions underlying Section 9(7) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and sub-section 12 thereof has submitted that the legislature is very clear in providing a tenure for all Members of the Tribunal for three years unless the same is curtailed by the appointing authority under the proviso to sub section 12 of Section 9, on grounds of misconduct, otherwise he has to be allowed to continue on the post for three years.

Mr. Singh with reference to the Notification dated 10.12.2013 placed at Annexure-6 submits that the petitioner ought to have been allowed to continue until 9.12.2016 and not made to superannuate with effect from 30.4.2014 thus curtailing his tenure.

A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the Department. It is with reference to Section 9(3) of the Act that by Mr. Bose submits that the tenure of a departmental member is only until the date of his superannuation. It is submitted that from a plain reading of the provision it is manifest that an officer of the Commercial Taxes Department fulfilling the eligibility criteria can be posted as member of the Tribunal and thus such posting can only continue until his service tenure. He submits that the stipulation in so far as the third Member is concerned, is different and would not enure to the benefit of the petitioner.

Mr. Bose again with reference to the proviso attached to Section 9 (7) has submitted that in so far as superannuated members are concerned the provisions clearly stipulate for their appointment as such.

Mr. Bose next referring to the supplementary counter affidavit filed in the proceedings has referred to Annexure-A which is the Notification of posting of one Tapan Kumar Chakraborty, Additional Commissioner, Commercial Taxes Department as departmental member in the Tribunal consequent upon the superannuation of the petitioner and with reference to the posting order he submits that the tenure is clear from the notification itself. He further submits that since after his superannuation, the petitioner has drawn of his post retiral benefits and thus the matter stands concluded.

Mr. Singh learned Senior counsel responding to the arguments of Mr. Bose has submitted that whereas there is a clear stipulation in the posting order of Mr. Chakraborty that his appointment as member of the Tribunal would be until further orders or until his superannuation but there is no such stipulation in the posting order of the petitioner which would be guided by Sub sections (7) and (12) of Section 9 of the Act and the petitioner is entitled for continuation as Member for a period of three years since his appointment on 10.12.2013.

I have heard learned counsel for the parties and I have perused the materials on record.

The provisions of Sections 9(3),(7) and (12) of 'the Act' runs as follows:

> "9(3) One of the other two Members shall be an officer of the Commercial Taxes Department of the State Government not below the rank of Joint Commissioner and the third Member shall be a person-
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> (a) who has, for at least ten years, been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949(38 of 1949) or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant; or
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> (b) who is or has been an officer of the Indian Audit and Accounts Service not below the rank of Deputy Accountant-General; or
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> (c) who is a Government servant, whether serving or retired having experience of at least four years in the administration of accounts or financial management in the State Government or public sector undertaking.
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> (7) Any person appointed as a member of the Tribunal shall ordinarily hold office for a period of three years:
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> Provided that in case a retired High Court Judge is appointed as the Chairperson or any other Government servant is appointed as a Member, after his superannuation to the Tribunal, the terms and conditions of service (including his pay and allowances) shall be such as may be prescribed.
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> (12) The Members of the Tribunal shall, ordinarily be appointed for a period of three years from the date of their appointment:
>
> Provided that the period of appointment may be reduced or extended by the State Government."

(Emphasis is mine)

The issue canvassed by Mr. Singh is that the petitioner should have been allowed to continue for three years in terms of the provisions underlying Section 9(7) and (12) of 'the Act' which specifically provides a tenure of three years for any Members appointed in the Tribunal. The issue is whether the petitioner was 'appointed' as a Member or he was 'posted' as a Member of the Tribunal. The answer lies in the notification itself. The notification which the petitioner claims to be his appointment order is available at Annexure-6 to the writ petition and it is anybody's guess that it is an order of posting of the petitioner as Member, Commercial Taxes Tribunal, until further orders. Similarly, the order available at Annexure-A to the supplementary counter affidavit again is an order of posting of Mr. Chakraborty. These are 'posting orders' and not appointment orders.

The provisions of Sections 9(7) and (12) are very clear when it provides for an appointment for three years. The proviso to Sub-section (7) makes it further clear that where any Government servant is 'appointed' as member of the Tribunal, his terms and conditions on his appointment after his superannuation would be as prescribed. Meaning thereby, that an officer of the Commercial Taxes Department posted as a Member of the

Tribunal would continue until his service tenure and in case the Government decides to continue him as a member consequent upon his superannuation then he be may be freshly appointed on such terms and conditions as may be prescribed and in such case the period of appointment would be of three years unless curtailed in exercise of power vested under the proviso to sub section 12 of Section 9. Since the case of the petitioner is not of 'appointment' rather it is a case of 'posting' hence his continuation would be guided by section 9(3) of the Act and not Section 9(7) or 9(12) of the Act and in such circumstance the petitioner's posting could only continue until his service tenure.

No infirmity can be found in the action taken by the department in superannuating the petitioner and for the reasons discussed, this writ petition is dismissed.

(Jyoti Saran, J)

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