

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1151 of 2009
IN
Civil Writ Jurisdiction Case No. 9234 of 2000**

- =====
1. The State of Bihar
 2. Director, Horticulture, Bihar, Patna
 3. Director, Agriculture, Bihar, Patna.
 4. Commissioner, Agriculture Production, Govt. of Bihar, Patna
- Respondents/ Appellants.

Versus

1. Garurdhawaj Kr. Pd. Shahi, son of Late Ganga Prasad Shahi, posted as Horticulture Inspector, Sitamarhi.
2. Birendra Kishore Singh, son of Sri Rameshwar Singh, posted as Horticulture Inspector, Patna.
3. Nand Kishore Prasad, son of Sri Rameshwar Prasad, posted as Horticulture Inspector, Patna.
4. Saryoo Saran Singh, son of Sri Sadhu Saran Siungh, posted as Horticulture Inspector, Patna

..... Petitioners/ Respondents 1st set

5. Binay Kumar Shukla at present posted as Horticulture Officer attached to the office of Director, Horticulture, Bihar, Patna.
5. MD. Abdul Adul posted as Sub Divisional Officer attached to office of District Horticulture Officer, Nalanda.
6. Barun Kumar posted as Horticulture Officer attached to the office of Executive Officer, Horticulture Division, P.W.D., Patna .
7. Shahjanand Singh, posted as Sub Divisional Horticulture officer, Sherghati attached to the office of District Horticulture Officer, Gaya
8. Thakur Rai Shankar Prasad Singh, posted as Sub Divisional Horticulture Officer, Dalsingsarai attached to the office of District Horticulture Officer, Samastipur.

.... Respondents 2nd party

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Appearance :

For the Appellants : Mr. Ashok Kumar Keshari, AAG -XI
For the Respondents : Mr. Yogendra Mishra

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C.A.V. JUDGEMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 15 -12-2015

The appellants, State of Bihar and its officers have preferred this Intra Court Appeal being aggrieved by the order of the learned Single Judge dated 17.09.2008 passed in CWJC No. 9234 of

2000, wherein a direction was issued to the appellant State to prepare a fresh combined gradation list of Vegetable Extension Workers and Horticulture Inspectors, which were two separate cadres and were held to be merged with effect from 07.11.1989. A further direction was that the issue of promotion from this unified cadre, based on seniority, to the post of Sub Divisional Horticulture Officer be done afresh and consequential orders be issued accordingly.

Having heard the parties, we are of the view that the learned Single Judge under a wrong assumption that the Government letter dated 07.11.1989 was a notification of merger of two cadres has allowed the writ application of the petitioners. The aforesaid letter was merely on internal reorganization in the Agriculture Department creating a Horticulture Directorate without any financial burden or upgradation of pay scale and in no manner can be termed as policy decision of the government. Hence, the order of the learned Single Judge requires interference and the Appeal has to be allowed.

The Agriculture department created a Horticulture Directorate by way of vertical bifurcation from the Regional level to the State level vide its notification dated 07.11.1989. Clause 2 (Ja) of the said letter specifies the cadre of Horticulture Inspector and Horticulture Workers which consisted of 212 posts in the pay scale of Rs. 580-860/-, and, those of Vegetable Extension Workers consisting 144 posts in the pay scale of Rs 535-765/-. All these posts were to migrate to the Horticulture Directorate. Hence, identification of the posts had to be made, who would work in Co-ordination (Sambandh)

and unison with each other in the Sub-Divisional and Block level for Horticulture work. However, the said letter specified that this bifurcation and creation of the Horticulture Directorate would be without any additional financial burden or advancement as stipulated in Clause 2 (Ja) of the said letter.

Learned Counsel for the appellants/State contended that the learned Single Judge wrongly assumed that the Directorate of Horticulture created by way of an internal re-organization in the department of Agriculture, resulted in merger of two cadres i.e. Vegetable Extension Workers and Horticulture Inspectors, the venue of promotion being Sub-Divisional Horticulture Officer. It has been submitted that this was merely an Internal Re-organization in the Agriculture Department to establish a new Horticulture Directorate, whose main objective was to promote Industrial Production of fruits, vegetables and flowers without any financial burden or upgradation in pay of the existing pay scale.

It was vehemently urged by the appellants that merger of two cadres is purely a policy decision of the State Government, which requires concurrence of the Finance as well as the Personnel and Administrative Department (now General Administration Department). Even the parent Department is not competent to take decision of merger of two different cadres. The said letter dated 07.11.1989 which is the only basis on which the learned Single Judge allowed the writ petition and strongly relied upon by the writ petitioners is a letter issued by the Agriculture Department and not a

policy decision of the Government. The appellants then submitted that the petitioners, who were Vegetable Extension Workers have since been promoted to the post of Horticulture Inspector vide order dated 26.02.2010 issued by the Director, Horticulture, Bihar, Patna which has been neither objected but very well accepted by the petitioners.

Learned counsel Shri Yogendra Mishra for the writ petitioners, who are respondents in this appeal, however, contended that the notification dated 07.11.1989 was a policy decision of the State Government wherein an independent Horticulture Directorate was created resulting in the merger of the two cadres of Horticulture Inspectors and Vegetable Extension Workers, who had to work in Co-ordination in the Sub-Divisional and Block level. He has brought on record Schedule 1 appended to the letter dated 07.11.1989 to show that with respect to Vegetable Extension Workers the pay scale has been upgraded at par with Horticulture Inspectors and that by annexure-2 of the writ application, one of the petitioners/respondents has been nomenclated as Horticulture Inspector to be posted from Muzaffarpur to Darbhanga, but, only to be negated by the corrigendum issued on 16.03.2011 by the Government, which is Annexure-1 of I.A. No. 4138 of 2011, which is further strengthened by Annexure-10 and counter affidavit of Private respondent Nos. 5 to 9 in the writ application, that the Horticulture Inspectors and Vegetable Extension Workers belonged to two distinct cadres. Hence, there was no question of merger of the two posts.

The appellants in the writ petition had denied merger, specifically at paras 9 to 12 of the counter affidavit stating therein that they had separate entity and there was no merger of the said post. The promotional avenue of the Vegetable Extension Workers was Horticulture Inspectors provided they possess the requisite qualification.

However the learned single Judge relied on letter dated 07.11.1989 treating it to be a merger of two cadres as consequence to the creation of the Horticulture Directorate. In Agriculture Department no such merger took place as the pay scale of Horticulture Inspectors was higher i.e. Rs. 580—860 (prerevised) and of Vegetable Extension Workers was Rs. 535- 765 and the letter dated 07. 11.1989 did not propose any additional financial burden as a consequence of internal re-organization and creation of Horticulture Directorate within the Agriculture Department.

It is further to be noted that the merger of the two cadres is purely a policy decision requiring approval of the Cabinet. No such policy regarding merger and the cabinet decision has been brought on record and a mere internal re-organization and creation of a Horticulture Directorate directing that the Horticulture Inspectors and Vegetables Extension Workers to work attached to each other/ in Co-ordination with each other the Sub-Division and Block level, would not classify the two cadres having been merged. Clause (2) (Jha) specifically provided that reorganization of the Horticulture Directorate, the posts nominated as such, would not

fetch higher pay scale and would not entail additional financial burden.

To us it is clear, that the said notification itself clearly specifies the object for which it was issued, to encourage commercialization of fruit and vegetable sector. Accordingly, State decided to bifurcate the Agriculture Directorate by creating a separate Horticulture Directorate and transferring to this new Directorate, Horticulture Inspectors and others in their own pay scale without any new or added financial burden. It is not disputed that for Vegetable Extension Workers, with requisite graduate qualification, Horticulture Inspector is a promotional post, where in fact on 26.02.2010, some Vegetable Extension Workers were promoted. They accepted the promotions as such. That would not be the case, if the cadres were to be merged with effect from 07.11.1989. All along State contended through their counter affidavits, including one, by the Chief Secretary, Government of Bihar, that there was no decision of the Government for merger at all. It was merely bifurcation and internal arrangement in Agriculture Department of its Directorate. Subsequent pay revision recommendations have all along treated them to be separate posts, which was never objected to by the Writ petitioners. Merger of cadres is a serious matter and can only be done by a conscious decision of the State Government and not by a Department itself.

Be that as it may, learned Single Judge relied on only Annexure-I of the writ petition dated 07.11.1989 treating the creation of Horticulture Directorate to merge two separate cadres of Vegetable

Extension Workers and Horticulture Inspectors for which a combined gradation list was directed to be prepared and consequential promotion be granted.

The letter dated 07.11.1989, which was the sole letter relied upon by the learned Single Judge can not be termed as a merger of two aforesaid cadres rather it is a creation by way of Internal Re-organization of the Horticulture Directorate specifying, no financial burden, no higher pay, for the merger of two cadres could be by a policy decision which requires concurrence of the Finance Department, Personal Administrative Reforms Department (now General Administrative Department) and the Cabinet decision. Unfortunately, the letter dated 07.11.1989, Annexure-1 which was solely relied by the learned Single Judge is completely silent on this issue as well.

Hence, the order of the learned Single Judge can not be sustained and is set-aside.

The appeal is accordingly allowed.

(Nilu Agrawal, J.)

(Navaniti Prasad Singh J.) I agree

Sudha/-

(Navaniti Prasad Singh, J.)

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