

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.614 of 2014
IN
Civil Writ Jurisdiction Case No. 13499 of 2010

- =====
1. The State of Bihar
 2. The Secretary, Building Construction Department, Vishwasharaiya Bhawan, Bailey Road, Patna
 3. Sri Ghanshyam Ram, Under Secretary to the Government of Bihar, Building Construction Department, Vishwasharaiya Bhawan, Bailey Road, Patna
 4. The Principal Secretary, General Administrative Department, Old Secretariat Building, Patna

.... Respondents-Appellants

Versus

1. Anil Kumar, S/o- Ram Shringar Choudhary, R/o:- Bahadurpur, Ward No.-23, P.S.- Samastipur, District- Samastipur Respondent-Petitioner
2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
3. Sri Mukti Prasad, S/o Jitan Prasad, at present posted as Asstt. Government Architect in the Department of Building Construction, Government of Bihar, Patna. R/o-Moh- R.M.S. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

.... Respondents-Respondents

with

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Letters Patent Appeal No. 1138 of 2013
IN
Civil Writ Jurisdiction Case No. 13499 of 2010

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1. Mukti Prasad, Son of Shri Jitan Prasad, At present posted as Assistant Government Architect in the Department of Building Construction, Government Of Bihar, Patna And Residing At Mohalla- R.M.S. Colony, Kankarbagh, Police Station- Kankarbagh In The Town And District Of Patna

.... Appellant

Versus

1. The State Of Bihar
2. The Secretary, Building Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna
3. Shri Ghanshyam Ram, Under Secretary To The Government Building Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna
4. The Principal Secretary, General Administration Department, Old Secretariat Building, Patna
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
6. Shri Anil Kumar, Son of Ram Shringar Choudhary, Resident of Bahadurpur, Ward No. 23, P.S.- Samastipur, District- Samastipur

.... Respondents

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Appearance :

(In LPA No. 614 of 2014)

For the Appellants : Shri Rohit Mishra, Adv.

For the Respondents :

(In LPA No. 1138 of 2013)

For the Appellant : Shri Ranjit Kumar Singh, Adv.

For the Respondents :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

I.A. No.3063/14 is filed with a prayer to condone

the delay of 243 days occurred in filing the present Appeals.

It is stated that the delay occurred in the process of obtaining legal opinion and taking administrative decision.

No counter affidavit is filed by the respondents.

We are satisfied with the reasons mentioned in the I.A. Delay is, accordingly, condoned.

Letters Patent Appeals

These two writ appeals are filed, assailing the order dated 2.7.2013, passed by the learned single Judge in C.W.J.C. No.13499/10. For the sake of convenience, the parties are referred to, as arrayed in the writ petition. The relevant facts are as under.

The petitioner was appointed as an Assistant Architect, in the undivided State of Bihar. Similarly, the 5th respondent was appointed to the same post. The next higher post is that of Senior Architect. When the State was



undivided, there existed two posts of Senior Architect. On bifurcation, one post each was allocated to the State of Bihar and the State of Jharkhand. Ever since the bifurcation, the post that fell to the State of Bihar, remained vacant. It was only in the year 2006 that the petitioner was asked to officiate against it.

The petitioner filed C.W.J.C.13499/10 with a prayer to direct the respondents, i.e. the State, to promote him on regular basis to the post of Senior Architect and to pay him the difference of salary, for the period during which he officiated against the post. The State, i.e. respondents 1 to 5, on the one hand and the 6th respondent on the other, opposed the writ petition by filing separate counter affidavits. Main plank of their argument was that when there existed two posts, a vacancy that was earmarked for Scheduled Caste candidates, was carried forward on account of non-availability of the candidate at the relevant point of time, and since the 6th respondent happens to be a Scheduled Caste candidate, he is entitled to be considered for promotion to the post.

Learned single Judge did not accept the contentions of the respondents. It was observed that in view of the bifurcation of the State, there is only one vacancy,



and the question of applying rule of reservation for promotion to it, does not arise. Further, in view of the fact that the writ petitioner is the senior most, direction was issued to the State to consider his case for promotion on regular basis. Another direction was that the petitioner shall be fully remunerated for the period during which, he officiated against the post of Senior Architect. While the State filed L.P.A. No.614/14, the 6th respondent filed L.P.A. No.1138/13, challenging the Judgment rendered in the writ petition.

Heard Shri Gautam Boase, learned AAG 8, and Mr. Rohit Mishra, learned Counsel, for the appellants, and Shri Ranjit Sinha, Shri Chakrapani, Shri Ambuj Nayan Chaubey, Shri Amit Kumar and Shri Vikash Kumar, learned counsel for the respondents in L.P.A. No.614/14 and Shri Ranjit Kumar Singh, learned counsel for the appellant, and Shri Chakrapani, Shri Ambuj Nayan Chaubey, Shri Amit Kumar and Shri Vikash Kumar, learned counsel for the respondents in L.P.A. No.1138/13.

Two aspects become relevant in these Appeals. The first is about the entitlement of the writ petitioner to be considered for promotion to the post of Senior Architect. Supplementary to this is the question as to whether the

rule of reservation would apply to the post of Senior Architect. The second aspect is as to whether the writ petitioner is entitled to the salary attached to the post of Senior Architect for the period during which he officiated against it.

On the first aspect, it is not in dispute that only one post of Senior Architect exists in the State of Bihar. It is fairly well settled that the rule of reservation does not apply to the cases where the cadre strength is only one. It may be true that the rule of reservation was made applicable to the post of Senior Architect at a time when the State was undivided and the number of posts was two. It is also a fact that one vacancy that was available for Scheduled Caste candidates was carried forward. However, all that arrangement comes to an end, with the bifurcation of the State. A totally new establishment had come into existence on bifurcation. Since only one post exists now, the post that was carried forward when the State was undivided, does not spill over, to the State of Bihar, after bifurcation. Therefore, the rule of reservation does not apply to the post of Senior Architect.

Since there is no dispute that the promotion to the post of Senior Architect is purely on the basis of



seniority, and that the writ petitioner is the senior most Assistant Architect, no exception can be taken to the direction issued by the learned single Judge directing that the case of the petitioner be considered for promotion to the post of Senior Architect. It is brought to our notice that the writ petitioner has since been promoted in January, 2014.

So far as the second aspect is concerned, the learned single Judge gave a direction to the effect that the writ petitioner shall be fully remunerated for the period, during which, he officiated as Senior Architect. The petitioner construed that as his entitlement to the full emoluments or salary, attached to the post of Senior Architect, for the period during which he officiated against it. Reliance is placed on Rule-89 of the Service Rules.

We find it difficult to accept that contention. Rule-89, in fact, places restriction on an employee from drawing any remuneration, other than the one which is attached to his substantive post. It is only such of the officiating pay, as is permissible in law, that can be paid to him. This, however, is to be examined as and when the writ petitioner submits a representation in this behalf.

We, therefore, dismiss the writ appeals. However, we modify the direction issued by the learned

single Judge as regards the remuneration to be paid to the petitioner to the effect that it shall be open to him to submit a representation, citing the relevant provisions, and as and when the same is submitted, the concerned authority shall pass orders thereon, in accordance with law.

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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