

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.359 of 2014

IN

Civil Writ Jurisdiction Case No. 8156 of 1995

- =====
1. Area Development Commissioner- Cum - Chairman, Gandak Command Area Development Agency, Muzaffarpur.
 2. Secretary, Gandak Command Area Development Agency, Muzaffarpur.

.... Appellants

Versus

1. Radha Pandey, Son of Late Baleshwar Pandey, resident of Village - Keshopur, Police Station - Ekangarsarai (Telhara), District - Nawada
2. Nilambar Thakur, Son of Late Uttam Narayan Thakur, Resident of Village - Siwan, Police Station - Pandaul, District – Madhubani.
3. Swami Nath Ram, Son of Chandrika Ram, Resident of Village - Sarsar, Police Station and District - Siwan
4. Sugambar Prasad, son of Sri Bhagwat Harizan, Resident of Village - Pattor, P.S. Aswan, District - Siwan
5. Mohan Rajak, Son of Shyam Lal Rajak, Resident of Village - Rassalpur, P.S. Jehanabad, District – Gaya.
6. Sudisht Narayan Singh, Son of Shiv Dayal Singh, Resident of Village - Sikandarabad, P.S. Baikunthpur, District - Gopalganj
7. Dinesh Prasad, Son of Mishri Raut, Resident of Village - Amnaour, P.S. Chapra, District - Saran
8. Parasnath Singh, Son of Narayan Singh, Resident of Village - Mahauri, P.S. and District Siwan
9. Muzaffarpur Imam Khan, Son of Abdul Zafar Khan, Resident of Village - Chikapatti, P.S. and District - Motihari, East Champaran
10. Vishwanath Tiwary, Son of Sandeo Tiwary, Resident of Village - Parwan, P.S. Sikarganj, District - East Champaran

.... Respondents (1st Set)

11. The State of Bihar.

12. Secretary, Agriculture (Special Programme) Department, Bihar, Patna

.... Respondents (2nd Set)

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Appearance :

For the Appellants : Mr. Chitranjan Sinha, Sr. Advocate.
Mr. Satish Chandra Jha-3, Advocate.

For the Respondents : Mr. Umesh Prasad Singh, Sr. Advocate.
Mr. Rajeev Ranjan Prasad, Advocate.
Mr. Rajendra Kumar, Advocate.

For the State : Mr. Nirbhay Kumar Singh, G.P.26

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 02-04-2015

The Letter Patent Appeal is filed against the order dated 19.06.2013 passed by the Learned Single Judge in C.W.J.C. No. 8156 of 1995.

The Respondents 1 to 10 filed the writ petition claiming promotion and other benefits in the service of the appellant organization. They pleaded though they have been appointed on regular basis, the appellant started treating them in the work-charged establishment and denied several benefits.

The writ petition was opposed by the appellant by filing detailed counter affidavit. It was pleaded that the respondents were extended all the benefits which they were otherwise entitled to, and their complaint that the employees who were junior to them were extended higher benefits, it is not correct.

Learned Single Judge allowed the writ petition directing that the appellant shall promote the Respondents as Clerks with effect from 11.02.1982 and to extend subsequent time bound promotions and selection grade scales in the cadre of Clerk and to pay the arrears of salary in the promoted scales with effect from the aforesaid date within six months. Hence this appeal.

Heard Sri Chitranjan Sinha, learned Senior counsel for the appellant and Sri Umesh Prasad Singh, learned Senior counsel for the Respondents.



There was a long standing dispute between the Respondents on the one hand and the appellant on the other hand with regard to the nature of their induction into the service. The Respondents pleaded that they were appointed on regular basis as Treasure Guards. However, the contention of the appellant was that their induction into service was only on work charged basis. On account of adjudication that had taken place, over the period, it ultimately emerged that the appointment of the Respondents must be considered as the one on regular basis. This in turn gave rise to the question of promotion of higher post of Clerk. At one point of time a direction was given by this Court to the appellant to consider the case of the Respondents for promotion, but the same was rejected. The order of rejection became the subject matter of the present petition.

For all practical purposes, the Learned Single Judge took note of the fact that the appointment of the Respondents has been on regular basis. We also agree with the finding of the Learned Single Judge. Once the appointment of the Respondents is to be treated as on regular basis, they are naturally entitled to be promoted. However, a distinction needs to be drawn between the right to be considered for promotion on the one hand, and the right to be promoted on the other hand. An employee can claim the former and not the latter. If after consideration of the

matter of an employee, the employer refuses promotion, the reasons that weighed with him are subject to judicial scrutiny.

In the instant case, the order of rejection of promotion was without any reason. Obviously, because of that the Learned Single Judge has set aside the same. What becomes important is the purport of the direction that can be given thereafter. The recognition of right of the Respondents to be considered for promotion should have simply resulted in a direction to the appellant to consider the case of the Respondents by treating their appointment as on regular basis. However, the direction issued by the Learned Single Judge not only that the Respondents must be promoted to a higher post but also with effect from a particular date, and for payment of arrears of salary cannot be sustained in law. Time and again, the Hon'ble Supreme Court held that even in a writ of mandamus, no specific direction for appointment or promotion can be given and at the most direction could be given for considering the case for appointment or promotion.

We, therefore, partly allow this Appeal by modifying the order passed by the Learned Single Judge to the effect that the appellant shall consider the case of the Respondents 1 to 10 for promotion to the next higher category in accordance with Rules within three months from today. If the Respondents are not satisfied with the nature of benefit that is extended to them,

it shall be open for them to pursue their remedies.

The Interlocutory Application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

AFR
Chandran/Md. Ibrarul

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