IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.956 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 8147 of 2014
Along with
Interlocutory Application No.4021 of 2015

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

.... Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Govt. 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 Appellant/	:	Mr. Rajendra Pd. Singh, Senior Advocate Mr. Mukesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. R. B. Pd. Yadav, A.A.G.-11 Dr. Sanjay Kumar Singh, A.C. to A.A.G.-11

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 09-09-2016

Re.: Interlocutory Application No.4021 of 2015

The application is for condonation of delay of 14 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.956 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Judge of this Court on 9th of February, 2015 whereby the writ application filed by the appellant for declaration that he will continue as Member of the Commercial Tax Tribunal (hereinafter referred to as 'the Tribunal') for a period of three years remained unsuccessful.

2. The appellant as Member of Bihar Finance Service was promoted and appointed as Member of the Tribunal vide Notification dated 10.12.2013. The Notification is that recently promoted Additional Commissioner Rabindra Singh is appointed as Member of Tribunal till further orders. The appellant was due to attain the age of superannuation on 30th April, 2014 and before that date on 15th of April, 2014, the appellant invoked the jurisdiction of this Court for declaration that he was appointed for a period of three years and cannot be made to superannuate on attaining the age of 60 years on 30th of April, 2014.

3. The appellant has attached an order dated 25th of April, 2014 and the order dated 30th of April, 2014 by way of an interlocutory application. The order dated 25th of April, 2014 (Annexure-7) shows that 8 members of the Tribunal were about to attain the age of

superannuation in the year 2014, i.e. from 30th of April, 2014 to 30th of November, 2014 and that they should furnish documents for payment of pension etc. Such order is issued by the Additional Commissioner, Commercial Taxes, Bihar, Patna on behalf of the State Government. On 30th of April, 2014, vide Annexure-8, the appellant was informed that he is attaining the age of superannuation on 30th of April, 2014 and, therefore, he should relinquish the post and retire. The appellant has relinquished the charge of the post by separate writing dated 30th of April, 2014 as well.

4. The argument of learned counsel for the appellant is that a Member of the Tribunal holds office for a period of three years; therefore, once he has been appointed as a Member of the Tribunal in December, 2013, he will continue to be a Member of the Tribunal for a period of three years in terms of Section 9(7) of the Bihar Value Added Tax Act, 2005 (for short, 'the Act').

5. To appreciate the said argument, certain provisions from the Act need to be extracted.

> **9. Tribunal**.- (1) xxx
> (2) xxx
>
> (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-
>
> (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

(b) who is or has been an officer of the Indian Audit and Accounts Service not below the rank of Deputy Accountant-General; or

(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.

4. xx xxx
5. xx xxx
6. xx xxx

(7) Any person appointed as a member of the Tribunal shall ordinarily hold office for a period of three years:

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.

8. xx xx
9. xx xx
10. xx xx
11. xx xx

(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."

6. A perusal of the above provisions read with the order of appointment of the appellant would show that he was not appointed for a period of three years which is an ordinarily period in terms of sub-section (7) of Section 9 of the Act. The Notification appointing the appellant shows that he has been appointed till further orders. It is the State Government which has passed an order that the appellant is due to attain the age of superannuation on 30th of April, 2014 and,

therefore, he should furnish his pension papers. There is a subsequent letter issued on 30th of April, 2014 by the State Government directing the appellant to relinquish the charge. Thus, in terms of sub-section (12) of Section 9 of the Act, the State Government has reduced the period as to the date of superannuation of the appellant as a Member of the Bihar Finance Service.

7. Even if a Member is appointed for a period of three years, in terms of sub-section (12) of Section 9 of the Act, the State Government can reduce the period. Since no tenure was fixed of the appellant, therefore, the appellant cannot claim a declaration that he will continue as a Member of the Tribunal for a period of three years.

8. We do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	A. F. R.
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