

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.400 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 7443 of 2013
Along with
Interlocutory Application No.1903 of 2015

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1. The Bihar State Electricity Board through Chairman, Bihar Electricity Board, Bailey Road, Patna, Bihar.
 2. The Chairman, Bihar State Electricity Board, Bailey Road, Patna, Bihar.
 3. The Secretary, Bihar State Electricity Board, Bailey Road, Patna, Bihar.
 4. The Director (Personnel), Bihar Electricity Board, Bailey Road, Patna, Bihar.
 5. The General Manager - Cum - Chief Engineer, Muzaffarpur, Thermal Power Station, Kanti, Muzaffarpur.
 6. The Electricity Superintending Engineer, Muzaffarpur, Thermal Power Station, Kanti, Muzaffarpur.

.... Respondents -Appellants

Versus

Gauri Shankar Mishra, Son of Late Ram Gobind Mishra, Resident of village - Jagdishpur, P.S. Jagdishpur, District – Ara.

.... Petitioner- Respondent

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Appearance :

For the Appellant : Mr. Vinay Kirti Singh, Advocate
Mr. Ranjit Sinha, Advocate

For the Respondent : None

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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: 12-05-2016

Re.: Interlocutory Application No1903 of 2015

The application is for condonation of delay of 3 days in filing of the present appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is shown by the appellant to condone such delay. Consequently, the delay in filing of the present Letters Patent Appeal is

condoned.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.400 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th January, 2015 whereby an writ application was allowed and the appellants were directed to pay at least 50% back wages to the respondent- writ applicant, whereas other benefits will be subject to result of departmental proceedings.

2. The challenge in the writ application was to an order of termination of services dated 20th July, 1987. The facts on record shows that in pursuance of an advertisement to the post of Assistant Operator/Technical Grade III MTPS, Kanti, the applicant was appointed to the post of Assistant Operator/ Technical Grade III. The qualification for the said post was ITI either in the Electrical Trade or in Mechanical Trade. The writ applicant produced certificate of ITI, Turner Mechanical. On the basis of which, he was appointed.

3. A criminal case was registered against the writ applicant for the reason that he has obtained employment by committing fraud. The learned Trial Court convicted the writ applicant, but in appeal, the judgment of Trial Court was set aside on 16th June, 2012. The services of the writ applicant were dispensed with on 20.07.1987 without any

inquiry but after issuing a show cause notice. It is after his acquittal, the writ applicant sought re-instatement in service which has been allowed in the manner mentioned above by the learned Single Bench.

4. Admittedly, the termination of writ applicant has not preceded with any departmental enquiry. A perusal of the order of termination dated 20.07.1987 shows that a show cause notice was served upon him as to why he should not be removed/ disengaged from service, but since no reply was filed, the order of termination was passed.

5. A perusal of the record further shows that the writ applicant was appointed on 18th of July, 1984 on probation for a period of six months. On successful completion of the probation period, the writ applicant was to be absorbed in regular cadre as Assistant Operator/ Technical Grade III. The writ applicant continued in service for almost three years, therefore, he has worked beyond the maximum period of probation fixed in the letter of appointment.

6. The learned Single Judge has allowed the writ application on the ground that there was no departmental enquiry conducted against the writ applicant when his services have been terminated on the charge of misconduct. The appellants did not follow the Standing Order of the Bihar Electricity Board framed under the Industrial Employment Standing Order Act. Even in the absence of the Standing Order, the services of an employee cannot be terminated without conduct of regular

enquiry on completion of probation period. There was no semblance of enquiry while terminating the services of the writ applicant.

7. Learned counsel for the appellants refers to Supreme Court judgment reported as R.Vishwanatha Pillai & anr Versus State of Kerala, (2004) 2 SCC 105, to contend that if the appointment is void from its inception, it will not enable an employee to claim that he was holding a civil post and thus not entitled to claim an enquiry before an action is taken against him. We do not find that such judgment lays down that the services of an employee can be terminated without an enquiry if he has submitted a certificate which according to the appellants is forged certificate.

8. A perusal of the judgment shows that there was screening committee constituted by the Government of Kerala. Such Screening Committee conducted enquiry in the caste status of the appellant therein and rejected the claim of the appellant. The writ application against the said order was dismissed by the High Court and later by the Supreme Court. It is thereafter, the appellant filed an original application before the Central Administrative Tribunal that he should not be removed without complying with the procedure under Article 311 of the Constitution of India which was dismissed holding that he does not hold civil post.

9. The said judgment is not applicable to the facts of the

present case where there is no semblance of any enquiry conducted by any authority prior to the order of termination. Though, in the reported case there was inquiry and the judicial action against such findings remained unsuccessful.

10. Though the learned Single Bench has observed that payment of wages shall be subject to the departmental proceedings, but admittedly, the appellants have not initiated any departmental proceedings, therefore, the liberty granted to the appellant is redundant.

11. Thus, the order passed by the learned Single Judge is not found to be suffering from any patent illegality or irregularity which may warrant interference in the present intra court appeal. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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