

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1372 of 2014

In

Civil Writ Jurisdiction Case No. 23448 of 2012

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Sunil Kumar son of Jag Mohan Prasad Azad, resident of Mohalla- Delha-Dularganj, P.O.- Gaya, P.S.- Kotwali, District- Gaya

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Road Construction Department, Government of Bihar, Nirman Bhawan, Patna
3. The Chief Secretary-cum-Commissioner, null Water Resources Department (Irrigation Department), Government of Bihar, Patna
4. The Engineer-in-Chief, null Water Resources Department (Irrigation Department), Government of Bihar, Patna
5. The Secretary-cum-Commissioner, Rural Works Department, Government of Bihar, Patna
6. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna
7. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Verma, Senior Advocate
Ms. Meeta Sinha, Advocate

For the Respondent/s : Mr. Chittaranjan Sinha, PAAG-II
Mr. Shashi Shekhar Kumar Prasad
A.C. to PAAG-II

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 14-12-2016 Heard learned counsel for the appellant and learned counsel for the State.

The appeal has been filed assailing the order dated 15.05.2014 passed by a learned single Judge of this Court in C.W.J.C. No.23448 of 2012, by which the writ application has been dismissed, except to the limited extent that the respondents



were directed to modify the date of regularization and the date to permanent appointment of the petitioner from 11.08.2008 to 18.05.2007, i.e., the date of the earlier Division Bench order.

This is the second round of litigation before this Court. Earlier, the appellant had filed C.W.J.C. No.3843 of 1995 seeking direction upon the respondent-State for his regularization on the post of Junior Engineer in terms of the Government policy decision dated 21.12.1985 as modified by the Cabinet decision of 1987. The writ application was dismissed by order dated 06.03.1998. Thereafter, L.P.A. No.441 of 1998 was filed which was allowed by judgment and order dated 18.05.2007 to the extent that the Government was directed to give the appellant an ad-hoc appointment of Junior Engineer for a period of six months and to take steps to send the papers of the appellant to the Bihar Public Service Commission within two months from the date of appointment of the appellant as such ad-hoc Engineer with a further direction upon the Bihar Public Service Commission to ensure that its views, as regards the appellant, reaches the Government within two months from the date of placement of papers of the appellant before it whereupon the Government was to decide on the basis of the recommendation of the Bihar Public Service Commission as to whether to disengage the appellant on completion of six months period or to give him a permanent



appointment on a suitable post of Junior Engineer. The further direction was issued that the question of age bar will not apply to the case of the appellant since the appointment was made on the basis of the policy decision of the Government dated 21st December, 1985 as modified by the Cabinet decision taken in 1987 and having regard to the fact that the appellant was, as on the date of the said decision, working as a daily wage Junior Engineer, for whose benefit such decisions had been taken.

Thereafter, by office order dated 17.05.2011 issued by the Engineer-in-Chief, Road Construction Department, Bihar, Patna, the petitioner was appointed on the post of Junior Engineer (Civil) Road Construction Department with effect from 11.08.2008 which was the date on which he had been appointed as ad hoc Junior Engineer in terms of the direction of this Court by order dated 18.05.2007.

Aggrieved by the same, the appellant filed a writ petition, out of which the present appeal arises challenging the said order dated 17.05.2011 claiming that he has been denied equal treatment by the said order dated 17.05.2011 as other identically placed under the scheme were appointed with effect from 02.11.1989 by notification dated 15.12.1989 and the appellant further prayed for direction to the respondents to grant seniority to the petitioner with effect from 15.12.1989 along with monetary benefit.



The learned single Judge after considering the writ application and examining all the aforesaid facts, including the history of previous litigation, came to the conclusion that the Court has certain limitations in interpreting what the petitioner deserves and what is being claimed in the present writ application because what was granted by way of notification seems to be in harmony with the direction passed by the Division Bench. If the petitioner-appellant feels that the respondents have not been fair in the matter of extending the benefit, which prima facie the Court does not certify, in favour of the petitioner then the best course of action for him would have been to seek further modification or clarification from the Division Bench to bring him at par or provide parity or take him back in history to the year 1981. It was also observed that keeping in mind that the petitioner was disengaged as far back as on 18.09.1989 and no kind of relationship with the respondent State remained, giving him benefit for initial period of engagement as daily wages over and above what was granted by the Division Bench would be extending the benefit a bit too far but directed the respondents to modify the date 11.08.2008 to 18.05.2007, i. e, the date of the Division Bench order.

Learned counsel for the appellant has assailed the order seeking to rely on certain observations made in M.J.C. No. 9 of



2008, which had been filed alleging violation of the Division Bench judgment and order dated 18.05.2007 passed in L.P.A. No. 441 of 1998.

From a perusal of the same, although there are certain observations made, but ultimately the contempt application has been disposed of with the direction to the State to give the same treatment to the petitioner-appellant as other Junior Engineers engaged on daily wage basis within four weeks without demur in accordance with the judgment passed in Letters Patent Appeal, which has attained finality.

It is evident that any observation that was made in the said contempt application was to act in accordance with the judgment and order passed in L.P.A. No.441 of 1998 which has attained finality. The order passed in the contempt application cannot be read as modification of what has already been decided by this Court in L.P.A. No.441 of 1998. By the said order the clear direction was to re-engage the petitioner as ad-hoc Junior Engineer within two months from the date of the order with a further direction upon the Bihar Public Service Commission to ensure that its views as regards the appellant reaches the government whereupon the Government shall consider the case of the appellant in consultation with the B.P.S.C. as to whether to disengage the appellant on completion of six months period or to



give him a permanent appointment on a suitable post of Junior Engineer.

From a perusal of the aforesaid directions, it is evident that no direction was given for any retrospective benefit to the petitioner, rather the consideration was to be for a permanent appointment on a suitable post of Junior Engineer.

The learned single Judge of this Court has rightly observed that the respondents have while issuing the impugned notification dated 17.05.2011 acted in harmony with the direction passed by the Division Bench.

The aforesaid being our view also, it is not possible to extend any further benefit to the petitioner-appellant merely because he has filed a second writ petition.

Thus, we see no reason to differ with the findings and observations of the learned single Judge of this Court.

The Letters Patent Appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Arun Kumar, J)

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