

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.204 of 2014

IN

Civil Writ Jurisdiction Case No. 663 of 2010

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1. The State of Bihar
 2. The Chief Secretary, Govt. of Bihar, Patna
 3. The Commissioner cum Secretary, Department of Personnel and Administrative Reforms, Govt. Of Bihar, Patna
 4. The Commissioner cum Secretary, Animal Husbandry and Fishery Department, Govt. Of Bihar, Patna
 5. The Director, Fishery Deptt., Govt. Of Bihar Patna

.... Respondents-Appellants

Versus

Ganpati Singh, son of Sri Soti Singh, Resident of Village- Subha Nagar, Police Station- Kohalgaon, District- Bhagalpur

.... Petitioner- Respondent

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Appearance :

For the Appellants : Mr. Ranjeet Kumar, A.C. to P.A.A.G.

For the Respondent : Mr. Bindhyachal Singh, Advocate

Mr. Umesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-02-2016

I.A. No.899 of 2014

This application has been filed by the appellants, under section 5 of the Limitation Act, seeking condonation of delay of 2 years and 79 days in preferring the present Letters Patent Appeal against the order dated 29.08.2011 passed by the learned single Bench of this Court in C.W.J.C. No.663 of 2010.

Having considered the reasons assigned in the present petition seeking condonation of delay and having heard the learned counsel for the parties, this Court is satisfied that the appellants were prevented by sufficient causes from preferring the appeal within time.

In view of the above, the delay in preferring the Letters Patent Appeal is hereby condoned. I.A. No.899 of 2014 stands disposed of accordingly.

L.P.A. No.204 of 2014

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 29th August, 2011, whereby an order dated 28th August, 2009 passed by the Director, Department of Fisheries, Bihar, Patna, was set aside whereby the writ petitioner was ordered to be governed by the Contributory Pension Fund Scheme and not by the Pension Scheme.

The writ petitioner-respondent herein was an applicant for the post of Junior Engineer as a Scheduled Tribe category which he applied in response to the Advertisement No.99 of 1998. His name was recommended by the Bihar Public Service Commission on 20th of September, 2002, but the appointment was denied for the reason that new reservation policy has come into effect prospectively from 27th August, 2002. The denial of appointment was challenged by the writ petitioner-respondent herein in CWJC No.2726 of 2003 which was allowed by order dated 16th of May, 2003. The LPA Bench affirmed the said order. It is thereafter, on 15th February, 2006, the writ petitioner-respondent was appointed.

The grievance of the writ petitioner-respondent was that he was being treated as an appointee from the date of his appointment, whereas all other recommendees, in pursuance of the said advertisement, have been given the date of appointment from when they joined. Therefore, the writ petitioner-respondent is entitled to seniority from the date his immediate junior in pursuance of the recommendation of the Bihar Public Service Commission was appointed and also he has to be granted the same benefit in respect of Pension Scheme as well.

The claim of the writ petitioner-respondent for such benefit was declined by the Director, Department of Fisheries, Bihar, Patna, on 28th August, 2009. It is the said order, which has been set aside by the learned Single Bench vide the order impugned in the

present Letters Patent Appeal.

Learned counsel for the appellants contends that he is not challenging the grant of seniority or other benefits at par with other selectees made pursuant to Advertisement No.99 of 1998, but it is contended that since on the date of appointment of the writ petitioner-respondent, the new Contributory Pension Fund Scheme has come into force, therefore, the writ petitioner-respondent will be governed by the said Scheme and not by the Pension Scheme, as is applicable to the other similarly situated recommendees.

We find the contention to be wholly misconceived. The writ petitioner-respondent has to be treated at par with other selectees made pursuant to Advertisement No.99 of 1998, including the seniority as well as in the matter of entitlement of Pension Scheme.

Since the writ petitioner-respondent was denied the benefit of appointment on account of an action of the State, which action has been found to be unjustified, the writ petitioner-respondent cannot be treated in a discriminatory manner. He will be entitled to the same benefits as has been conferred or granted to the similarly situated employees.

In view of the above, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

The Letters Patent Appeal thus stands dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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