

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1392 of 1999

IN

Civil Writ Jurisdiction Case No. 6201 of 1990

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1. The State of Bihar
 2. The Commissioner, Excise, Bihar, Patna
 3. The Superintendent of Excise, Gaya
 4. The Secretary to the Commissioner, Excise Department, Government of Bihar, Patna

.... Appellant/s

Versus

1. Ramesh Prasad, son of Shri Gajadhar Ram, Excise Constable, Mobile Force, Gaya Police Station, Gaya, District Gaya
2. Rameshwar Sharma, son of Shri Bhagat Singh, Excise Constable, Incharge Assistant Sub Inspector, Jehanabad Circle, P.S. Jehanabad, District Jehanabad
3. Kamta Singh, son of Shri Jageshwar Singh, Excise Constable, Mobile Force, Purnea, P.S. and District Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Nandan, AAG-14
Mrs. Kiran Sinha, AC to AAG-14

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 11-08-2016

Present appeal has been preferred by the State as against the judgment and order dated 30.07.1999, passed in C.W.J.C. No. 6201 of 1990 filed by five writ petitioners, namely, Ramesh Prasad, Hirday Nand Singh, Rameshwar Sharma, Nami Narain Singh and Kamta Singh, who were excise constables. They were due for promotion in the year 1976. A panel was made which included the writ petitioners for promotion to the post of Assistant Sub-Inspector, Excise. They could not be promoted as the number



of vacancies were not large enough. Again, in 1981, as also in 1984 same thing happened. In 1989, again this exercise was being conducted when the panel was made but before promotion could actually be granted on 14.02.1990 a letter was issued by the Excise Commissioner laying down certain criteria for promotion of Excise Constables to the post of ASI, Excise. Two of the conditions were that they should have attended the course in the constable training school and that they should not be more than 45 years of age as on 31.01.1990. Being aggrieved by these two conditions the writ petition was filed, principal pleading being that once the promotion process had started and virtually reached the final stage, no new condition of disability could be prescribed, denying them promotion. The learned Single Judge in the writ proceeding agreed with the submission and directed by the judgment and order impugned that once the selection process had started, rules for promotion could not be altered. Accordingly, respondents were directed to consider the five writ petitioners for promotion in accordance with law. It is aggrieved by this judgment of learned Single Judge that this appeal has been preferred by the State. During pendency of the appeal for having not complied with peremptory orders of the Court, the appeal stood dismissed in respect of two of the writ petitioners i.e. Hirday Nand Singh and



Nami Narain Singh. The result is that the order of the learned Single Judge, insofar as these two writ petitioners are concerned, attained finality. If we now interfere, it may give rise to conflicting orders. It is for this reason we have no scope, but before that, by virtue of dismissal of the appeal as against the two of the writ petitioners, who are respondents herein, the appeal has become incompetent. It is, accordingly, held so. However, we would like to note that even on merits we are not satisfied, that the indulgence made on the principle of law and its application by the learned Single Judge cannot be twitched.

Learned counsel for the State next urges that Ramesh Prasad, who was one of the writ petitioners, later on filed another writ petition i.e. during pendency of the present writ proceedings, being C.W.J.C. No. 8049 of 1995 claiming promotion once again. That writ petition was dismissed and he could not get any relief right up to the Apex Court. He submits that in view of the aforesaid, it must be held that he suppressed this from the Court. The first writ petition was filed but was taken up after the writ of 1995 was disposed of. So far as filing is concerned, the first writ petition was filed in the year 1990. Surely no disclosure was required to be made about something that was done or was to be done in 1995 in the writ filed in the year 1990.



Learned counsel for the State submits that when the 1990 writ petition of Ramesh Prasad and others were taken up, Ramesh Prasad should have disclosed that his earlier writ petition has been dismissed because he was seeking the same relief. Again we are not impressed, inasmuch as, if we see the pleadings and the orders passed in the two writ petitions, in the first writ petition there were four persons other than Ramesh Prasad and in the 1995 writ petition there was Ramesh Prasad alone. Secondly, the 1990 writ petition from which this appeal arises challenge was of condition nos. 3 and 5 of the letter dated 14.02.1990 at the very end of the selection process which was disentitling them promotion. Whereas in the 1995 writ petition being C.W.J.C. No. 8049 of 1995 preferred by Ramesh Prasad he challenged the letter dated 27.05.1994 issued from the office of the Excise Commissioner in which he had pleaded that the requirement of CTS training and minimum educational qualification of matriculation had not been insisted earlier. He had studied up to Class-VII only but had been made to work as Assistant Sub-Inspector, Excise on several occasions. Several others had been granted promotion earlier. Court was not impressed as no promotion could be granted against the legal requirement which this petitioner at that time did not have.

Therefore, essentially the two writ petitions were under different circumstances and there was nothing wrong with the two writ petitions apart from different parties being there.

Thus, in our view, no interference is called for.

This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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CAV DATE	
Uploading Date	
Transmission Date	