

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.589 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 14460 of 2006
Along with
Interlocutory Application No. 2600 of 2015

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Surendra Prasad son of Late Motilal, resident of Mohalla- New Area, Beldari Tola,
Post Office, P.S. Gaya Town, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar, through Secretary, Transport Department, Government of Bihar, Patna.
2. The State Transport Commissioner, Bihar, Patna.
3. The Joint State Transport Commissioner, Bihar, Patna.
4. The Deputy Transport Commissioner-cum-Secretary, Magadh Regional Transport Authority, Gaya.
5. The District Transport Officer, Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 27-06-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 2600 of 2015

The Interlocutory Application has been filed seeking
condonation of 8 days delay in filing of the Letters Patent Appeal.

Upon hearing learned counsel for the parties and
considering the submissions made in the Interlocutory Application,
we find that sufficient cause has been shown for delay in filing of the
appeal. Consequently, the delay in filing of the Letters Patent Appeal
is condoned.

Interlocutory Application No. 2600 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 589 of 2015

The challenge in the present appeal under Clause-X of the Letters Patent of Patna High Court is directed against the order dated 23rd January, 2015 passed by the learned Single Bench by which C.W.J.C. No. 14460 of 2006 filed by the appellant has been dismissed.

The appellant was initially appointed on a temporary basis as a Peon in the office of the respondent no. 2 with effect from 17.04.1973. Subsequently, by order dated 22.04.1974, he was again appointed, along with 13 other persons, on temporary basis, and posted in the office of respondent no. 5. Thereafter, the appellant passed Matriculation examination in the year 1992. Due to paucity of employees, the appellant was authorized to perform the duty of Clerk in the office of the respondent no. 5 by order dated 07.08.1986, till further orders, by the order of the respondent no. 2. Later, by order dated 04.05.1987, the respondent no. 2 transferred the appellant to the office of the respondent no. 4 on deputation. Under a policy decision of the Government contained in Memo No. 335 dated 16.09.1992 providing for 50% of total vacancies of Correspondence Clerk/Clerk to be filled up by direct recruitment and rest 50% from eligible IVth



Grade employees having minimum qualification by holding limited competitive examination, some persons were promoted to Class-III in the year 1992. The appellant being aggrieved by him not being promoted to the post of Clerk approached this Court in C.W.J.C. No. 1662 of 2000. The same was disposed off by order dated 01.08.2006, directing the respondent no. 2 to dispose off the representation of the appellant by a speaking order in accordance with law. The same was done by order dated 05.09.2006 passed by the respondent no. 2, which was again challenged by the appellant in C.W.J.C. No. 14460 of 2006 and dismissal of the same has given rise to the present appeal.

Learned counsel for the appellant submits that persons who were junior to him have been granted promotion whereas the appellant has been wrongly denied the same. He has further submitted that the appellant having continuously worked on the post of Clerk is entitled to such promotion from the date when he was first made to discharge the duty on such post. Learned counsel submits that the order of the respondent no. 2 dated 05.09.2006 has not considered the case of the appellant in proper perspective. Learned counsel submits that juniors having been promoted, leaving out the appellant, shows arbitrariness on the part of the authorities and accordingly, the relief sought by the appellant ought to have been granted by the learned

Single Bench and the writ petition has wrongly been dismissed.

Learned counsel for the respondents submits that the claim of the petitioner is misconceived. Firstly, the appellant being a matriculate, due to shortage of staff, was authorized to perform the duty of the Clerk till further orders, by order dated 07.08.1986, and the order itself clearly stipulates that for such work, he would not be entitled for any extra benefits. Learned counsel submits that the appellant never objected to the same. It is further submitted that the order dated 05.09.2006, which was impugned in the writ petition, is a speaking order. Learned counsel submits that the cases of the persons who were named in the representation have been dealt with by the respondent no. 2 and the order discloses that Visheshwar Pathak and Satish Chandra Prasad were never promoted to the post of Clerk whereas Krishna Nand Prasad Razak and Dinesh Paswan, belonging to the Scheduled Caste category and Peter Murmu, belonging to the Scheduled Tribe category were given promotion in the reserved category whereas Harendra Prasad, being successful in the limited departmental examination, was given promotion, as per the mandate of Government resolution dated 16.09.1992. Learned counsel submits that the claim of the petitioner itself was stale since he had assailed the promotion given in the year 1992 only in the year 2000. Moreover, it is submitted that without making the persons, who were



alleged to have been granted promotion overlooking the claim of the appellant, were not made party and no relief could have been granted in their absence. It is further submitted that the appellant belonging to the General category and not having passed the limited competitive examination, cannot be promoted to Class-III post. Learned counsel submits that the appellant, being authorized to work on the post of Clerk in the year 1986, was not on the basis of any seniority and only because of him having passed the Matriculation examination. Learned counsel submits that the respondents have neither discriminated nor acted arbitrarily and the writ petition has rightly been dismissed.

Having considered the rival contentions, we do not find any merit in the present appeal. The appellant, despite having filed a representation for his promotion to Class-III post in the year 1993 had approached the Court only in the year 2000 and the decision of the Court dated 01.08.2006 was merely to dispose off the representation of the appellant, without commenting on the merit. Further, the ground on which the appellant claims such promotion, as per his case itself, is the Government resolution dated 16.09.1992 which provides for promotion to Class-III from Class-IV on the basis of limited competitive examination. Admittedly, the appellant not having qualified in the same, cannot have a claim for promotion. The grant of promotion to others who have been named in the representation of

the petitioner has also been explained that the same was either due to them belonging to the reserved category or after having qualified in the limited competitive examination, leaves no doubt that the appellant has not been discriminated against. We may also note the fact that such contentions were raised on behalf of the respondents before the writ Court by filing a counter affidavit, copy of which was served on learned counsel appearing for the appellant in the year 2006 and till the date of disposal of the writ petition i.e., 23.01.2015, no rejoinder having been filed on behalf of the appellant, is a clear indication of the fact that such contentions, both legal and factual, were not controverted and thus stood admitted.

For the reasons aforesaid, in our considered view, the learned Single Bench has rightly dismissed the writ petition. Accordingly, the Letters Patent Appeal, being devoid of merit, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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