

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.216 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 5425 of 2011**

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Arvind Kumar Sinha, Son of Late Bisheshawar Prasad, Resident Of Ram Sahay Lane, P.S. Sultanganj, District- Patna

.... Writ Petitioner/Appellant/s

Versus

1. The Reserve Bank of India Through Its Governor, Central Office, Mumbai
2. The Executive Director, DAPM, Reserve Bank Of India, Central Office, Mumbai
3. The Chief General Manager, H.R.D.D., Reserve Bank Of India, Central Office, Mumbai
4. The Regional Director, Reserve Bank Of India, Patna

.... Respondents in writ application/Respondents

.....Respondents

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Appearance :

For the Appellant/s	:	Mr. K D Chatterjee, Sr. Advocate Mr. Amaresh Kumar Sinha, Advocate Mr. Avinash Kumar, Advocate
For the Respondent/s	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Kaushal Kumar Jha, Advocate

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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: 27-07-2016

The challenge in the present Letters Patent Appeal is to an order dated 18th October, 2010 passed by the learned Single Judge of this Court in CWJC No. 5425 of 2011, whereby the writ application filed by the appellant claiming out-of-turn promotion in the Reserve Bank of India (in short, “R.B.I.”) remained unsuccessful.

The appellant earlier submitted a representation claiming out-of-turn promotion which was declined on 07.01.2010 by the Deputy General Manager, Reserve Bank of India, and later his appeal was rejected on 22.06.2010.

The appellant is working as a Clerk in Grade II-cum-Coin-Note Examiner Grade II in the R.B.I. and is a Chess player, which is one of the games recognized by R.B.I. in a circular dated 1st March, 2000, but is not an event or game which is played in the Olympics/Asian Games/Commonwealth Games/SAARC Games/SAF Games/World Cup Tournaments/Champions Trophy Tournament. Therefore, the claim of the appellant for out-of-turn promotion in terms of the scheme envisaged in the aforesaid circular was not acceded to.

The relevant conditions from the circular dated 1st March, 2000 read as under:-

“2. Out-of-Turn Promotion

An employee of the Bank who has rendered not less than two years service in the Bank, may be considered eligible for one out-of-turn promotion in the employee's entire career, if the employee fulfills any one or more of the following conditions:-

- (a) The employee has been awarded a National Sports Award, such as Arjuna Award or Rajiv Gandhi Khel-Ratna Award.
- (b) The employee has represented the country as a



playing member or as a reserve player in a game recognized by the Bank (*listed in the Annexure*) in any of the **international tournaments**; namely, the Olympics/Asian Games/Commonwealth Games/SAARC Games/SAF Games/World Cup Tournaments/Champions Trophy Tournament or in a Cricket Test/One-day International Series.

- (c) The employee has represented the State as a playing member (i.e. having actually played on the field) in a game recognized by the Bank (listed in the Annexure) at the national level for not less than five years and the employee or his / her team has, during these five years, won two medals either as winner or as runners-up in an individual or in a team event.”

The appellant is not a winner of National Sports Award to be eligible for out of turn promotion under Clause 2(a) of the above circular. He has also not represented the State as a playing member in a game recognized by the Bank at the national level for not less than five years or won two medals either as winner or as runners-up in an individual or in a team event so as to be eligible for out-of-turn promotion as mentioned in clause 2(c) of the circular. In respect of Clause 2(b), the Appellant is not eligible for out of turn promotion as chess is not a game which is played in any of the international tournaments specified in the circular. Therefore, the Bank has rejected the claim of the appellant for not having fulfilled any of the

conditions stipulated in the circular. Even the learned Single Bench did not find any merit in the claim of the appellant.

The entire argument of the learned counsel for the appellant is based on the fact that if cricket test or one-day international series of cricket can be included as game for out-of-turn promotion then why not chess. He has argued that it is a case of *casus omissus*. Therefore, this Court will fill up the gap and direct the respondent authorities to consider the appellant as eligible for out-of-turn promotion. Learned counsel has placed reliance upon the judgment of the Supreme Court in the case of *Union of India v. Hansoli Devi [(2002) 7 SCC 273]*.

On the other hand, learned counsel for the respondents has referred to the judgment of the Supreme Court in the case of *Dadi Jagannathdham v. Jamulu Ramulu (AIR 2001 SC 2699)*, wherein the Constitution Bench held as under:-

“13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there,

especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

We do not find any merit in the argument raised. It is a matter of policy as to which sports should be included and as to which individual sports person should have participated in an event / sports to become eligible for out-of-turn promotion. According to Clause 2 (b) of the Circular, two conditions have to be satisfied. Firstly, a person must have participated in a game recognized by the Bank and consequently he must have participated in international tournament as specified in the said Clause. Though he has played the game recognized by the Bank but not participated in any international tournaments as specified in clause 2(b). Even in terms of Clause 2(c) of the Circular, he has to play the game at the national level and has to win two medals either as winner or as runners-up in an individual or in a team event. Since none of the conditions of Clause 2 has been satisfied, this Court cannot apply the rule of *casus omissus* so as to make a person like the appellant eligible for out-of-turn promotion.

The judgment referred to by Learned Counsel for the appellant is not helpful to support his arguments. It has been held that when the language of the statute is plain and unambiguous, then the

court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The Constitutional Bench held as under:-

“9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in *Sussex Peerage case [(1844) 11 Cl & Fin. 85 : 8 ER 1034]* still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.”

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson & Co. Ltd [(1995) 2 All ER 345: 1955 AC 696 : (1955) 2 WLR 1135]* Lord Reid pointed out as to what is the meaning of “ambiguous” and held that: (All ER p. 366 C-D)

“A provision is not ambiguous merely because it contains a word which in different contexts is capable

of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.”

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar Ghose v. Arabinda Bose* (AIR 1952 SC 369 : 1953 SCR 1) had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry* (AIR 1920 PC 181) it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness

of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective.”

In another recent Constitution Bench judgment reported as *Sarah Mathew v. Institute of Cardio Vascular Diseases*, [(2014) 2 SCC 62], at page 78, *the* Court held that the legislative casus omissus cannot be supplied by Court. The Court held as under:-

“8.6. The rule of casus omissus stipulates that a matter which should have been, but has not been provided for in the statute cannot be supplied by the courts as, to do so, will be legislation by the court and not construction. The legislative casus omissus cannot be supplied by judicial interpretative process. There is no scope for supplying/supplanting any word, phrase or sentence or creating any exception in Chapter XXXVI which is a complete code in itself. (*Shiv Shakti Coop. Housing Society v. Swaraj Developers* [(2003) 6 SCC 659], *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*[(2012) 9 SCC 552: (2012) 4 SCC (Civ) 810] and *Commr. v. Velliappa Textiles Ltd.* [(2003) 11 SCC 405].

.....

“45. It is argued that a legislative casus omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti*



Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659], Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. [(2012) 9 SCC 552: (2012) 4 SCC (Civ) 810] and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case.

In view of the fact that the language of the policy is clear and specific, the Court cannot add player of chess as eligible for out of turn promotion under Clause 2(b) of the circular. We do not find any irregularity or illegality in the order of the learned Single Judge warranting any interference by this Court in the present Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl

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