

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.785 of 2013

IN

Civil Writ Jurisdiction Case No. 4654 of 2012

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1. The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna
 2. The Secretary to Govt., Department of Finance, Old Secretariat, Bihar, Patna
 3. The Commissioner-cum-Secretary to Govt., Personnel and Administrative Reforms Department, Old Secretariat, Bihar, Patna
 4. The Commissioner-cum-Secretary to Govt., Department of Commercial Taxes, Bihar, Patna, Vikas Bhawan
 5. The Commissioner-cum-Secretary, Department of Agriculture, Bihar, Vikas Bhawan, Patna
 6. The Joint Secretary to Govt., General Administration Department, Old Secretariat Building, Bihar, Patna

.... Appellants

Versus

Ram Nath Singh, son of Late Deo Nandan Singh, resident of Mohalla Krishi Nagar, P.O. Ashiyana Nagar, P.S. Shashtri Nagar, District Patna

.... Respondent

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Appearance :

For the Appellant/s : Mr. Piyush Lall, Advocate

For the Respondent/s : Mr. Lalan Kumar Singh, Advocate

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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: 12-07-2016

Heard Sri Piyush Lall learned counsel for the State and Sri Lalan Kumar Singh appearing for the contesting private respondent, who was the writ petitioner and with their consent this intra-court appeal is being disposed of at this stage itself.

Writ petitioner- contesting private respondent was appointed as Assistant-cum-Typist by order No. 15340 dated 29.10.1977 in the Directorate of Agriculture and was confirmed on



the said post with effect from 01.11.1978. It is not in dispute that this was a singular post outside any other cadre. By Government order No. 10393 dated 25.07.1989 in the Directorate of Agriculture considering the recommendation of the 4th Pay Revision Committee, which recommendation appears to be to merge the singular post of Assistant-cum-Typist with the Assistant cadre, decision was taken in respect of the writ petitioner as well. Accordingly, the writ petitioner upon merger was brought into the cadre of Assistant with effect from 25.07.1989 pursuant to Government orders. The writ petitioner superannuated on 31.01.2003, in the meantime, treating the petitioner to be in continuance of service from 01.11.1978, the date he was confirmed, he was granted first time bound promotion with effect from 01.11.1987 vide office order No. 4984 dated 02.05.1988. Petitioner's grievance is that though he joined service on 01.11.1977 he became entitled to the first ACP upon completion of 12 years of service on or about 01.11.1989 and thereafter would have become entitled to the second ACP on or about 01.11.2001. Both these were denied by the State.

In the writ petition the stand taken by the State was that the writ petitioner was brought into the cadre of Assistant which had been formed under the Act in 1989 and as per the Act his confirmation would be deemed only after three years. Thus, having

been brought in the cadre on 25.07.1989 his services in the cadre as Assistant would be confirmed from 1992 and if that be so then the first ACP would be due in 2004, which is after his retirement. Thus, there was no question of giving him either first or second ACP.

The learned Single Judge considered all aspects of the matter, and, in our view, rightly held that the writ petitioner's appointment in Government service was with effect from 01.11.1977. He did not enter the cadre by way of fresh recruitment to the cadre. He was merged into the cadre of Assistant from the singular post cadre of Assistant-cum-Typist as per the recommendation of the 4th Pay Revision Committee. Therefore, it would not be a case of fresh appointment to the cadre and he would not have to go through probation period. The learned Single Judge also, in our view, correctly held that upon merger with effect from 1989 though there was a marginal (about Rs. 8/-) upgradation in the pay-scale that would not be a financial upgradation to deny the ACP. The learned Single Judge rightly noticed that in the ACP scheme though it was initially provided by way of explanation that if merger resulted in a financial upgradation, it would be taken as upgradation denying ACP. It is not in dispute that this explanation was subsequently deleted. It may be noticed that the deletion was with retrospective effect and would surely enure to the benefit of the writ petitioner.

Having perused the judgment of the learned Single Judge, for the reasons already stated above, we are in agreement therewith and find no reason to take a different view of the matter. Thus, we do not find any merit in the appeal or any reason to interfere with the order passed by the learned Single Judge. The appeal is, accordingly, dismissed.

As the writ petitioner had superannuated with effect from 31.01.2003, it would be expected of the State to now grant two ACPs to the writ petitioner and, accordingly, work out the financial benefits and ensure that those calculations are made within three months and necessary payments made within four months. It goes without saying that these calculations would also affect his retiral benefits, which would also consequently be revised accordingly within the said period.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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