

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.776 of 2016
IN
Civil Writ Jurisdiction Case No. 5231 of 2014**

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Manoj Kumar Son of Late Sita Ram Mahto, Resident of Village- Bhagwanpur
Ramla, P.S. Ujiarpur, District- Samastipur

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. District Magistrate-Cum-Chairman, District Compassionate Committee, Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Adv Mr. Prabhat Kumar, Adv
For the State	:	Mr. Nadeem Seraj- GP-5 Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-07-2017

Seeking exception to an order dated 25.02.2016
passed by the Writ Court in C.W.J.C. No. 5231 of 2014, this appeal
has been filed under Clause-X of the Letter Patent.

Petitioner's father Late Sita Ram Mahto was
working in the establishment of the respondents. He died in harness
and applicant submitted an application seeking appointment in a
Class-III post as well. His application was processed but he was
granted appointment in a Class-IV post on 02.07.2010. He represented



the matter and when the same was not considered, in the year 2014, he filed the writ petition in question inter alia contending that he was entitled to appointment on a Class-III post and in appointing him in a Class-IV post, an illegality has been committed.

The learned Writ Court rejected the writ petition only on the ground that having accepted the appointment on 02.07.2010, the appellant, under law is prohibited from challenging the appointment and seeking appointment in a Class-III post after a period of more than four years. However, on re-examining the matter, we, on the last date of hearing on 21.03.2017 found that in view of the peculiar facts and circumstances of the case, the respondents could indicate as to why the appellant was not appointed in Class-III post and why similar treatment as granted to various employees indicated by the appellant, particularly in the case of one Ravindra Kumar is not being granted to the petitioner. In response to the order passed by us on 21.03.2017, respondent No. 3 has filed counter affidavit on 13.04.2017 and on a perusal of the averments made in the said counter affidavit, from para 7 onwards, we find that appellant submitted an application seeking appointment as a Revenue Karamchari which is a Class-III post. The matter was placed before the District Compassionate Appointment Committee and the District Compassionate Appointment Committee did recommend his case for



appointing him as Revenue Karamchari and in spite of the aforesaid recommendations, the appellant, for reasons which are not available on record was appointed in a Class-IV post. However, when a query was made as to why in spite of recommendations made for appointment of the appellant as Revenue Karamchari which post the appellant is even accepting today the appellant has not been appointed in a Class-III post, learned counsel appearing for the State invited our attention on a circular issued by the State Government to argue that once a candidate accepts appointment of a particular post granted on compassionate basis, he is precluded and prevented from seeking appointment on a higher post.

Having heard learned counsel for the parties and on a perusal of the records, we are of the considered view that merely because the circular so contemplates, the appellant cannot be denied the right of seeking appointment on compassionate ground in a Class-III post for the following reasons. (i) available on record is the recommendation of the District Compassionate Appointment Committee filed as Annexure-B to the counter affidavit of respondent No. 3 and the case of the appellant has been considered at Serial No. 22 and on a perusal of the aforesaid recommendation goes to show that recommendation was made that appellant can be appointed in a Class-III post. Thereafter, when the appellant was granted



appointment on 10.07.2010, after joining on the post, immediately within fifteen days the appellant represented to the Department on 28th July, 2010 vide Annexure-4 seeking appointment on Class-III post. The matter was referred to the higher authorities and vide Annexure-5, on 27th September, 2010, a recommendation was made by way of clarification that appellant can be appointed in a Class-III post in a particular case. Thereafter the appellant represented into the matter and even though the matter was referred to the higher authorities, when no action was taken, the writ petition was filed.

That being so, this is not a case where the appellant accepted the appointment on the Class-IV post without any objection. Apart for the fact that appellant, at the very first was available and raised objection as is indicated hereinabove, it is a case where he was found to be fit for appointment on a Class-III post. His application for appointment on a Class-III post as a Revenue Karamchari was considered and in spite of recommendations made for his appointment subject to approval by the Department on such post, respondents appointed him in Class-IV post whereas in the case of certain other employees like Sri. Ravindra Kumar they were granted appointment in class-III post.

We are of the considered view that in dismissing the writ petitioner only on the ground of delay and the appellant



having accepted an appointment on a Class-IV post, learned Writ Court has committed an error. It was a case where based on the recommendations made, direction could have been issued for appointing the appellant on Class-III post.

Keeping in view the aforesaid, we allow this appeal, direct for appointment of the appellant on a Class-III post and the appellant, on such appointment, shall be granted benefit of Class-III post prospectively from the date of his appointment.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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