IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1166 of 2016

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1. The Chairman, Bihar State Power Holding Company Ltd. Patna.
2. The Director (Finance), Bihar State Power Holding Company Ltd., Patna.
3. The Director (Administrative), Bihar State Power Holding Company Ltd., Patna.
4. The Secretary, Bihar State Power Holding Company Ltd., Patna.
5. The Company Secretary, Bihar State Power Holding Company Ltd., Patna.
6. The Managing Director, South Bihar Power Distribution Company Ltd., Patna.

Respondents.... .... Appellants

Versus

Ganesh Lal, Son of Late Bankey Lal , Resident of A/16, Anand Vihar, Anisabad, P.S.- Phulwarisharif, District- Patna Presently retired from the post of Accounts Officer (Look after) Electric Supply Division, Nawadah

Writ petitioner.... .... Respondent

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Appearance :

For the Appellant/s	:	Mr. Ranjit Sinha, Advocate
For the Respondent/s	:	Mr. Prashant Sinha, Advocate
		Mr. Baua Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 19-07-2017

This writ-appeal has been filed by the respondents-appellants herein under Clause 10 of Letters Patent of the Patna High Court against the judgment of a learned Single Judge dated 3.2.2016 passed in CWJC No. 3687 of 2013.

The factual matrix of the case lies in a narrow compass. The writ petitioner-respondent herein filed CWJC No. 3687 of 2013 for a direction to the respondents-appellants herein to grant promotion to the post of Accounts Officer under the Scheduled Caste category in view of the fact that the writ petitioner was stagnating on the post of Accountant since 1983.

The writ petitioner-respondent has pleaded in the writ petition that he was posted as Accounts Officer since 2002 and he has continuously performed the duty and responsibility of the Accounts Officer. He had stated that he was going to superannuate on 31st of January, 2014, he is stagnating on the post of Accountant for nearly two decades. Thus, the writ petitioner's claim was for grant of promotion on account of continuous officiation on the post of Accounts Officer from 2002.

The writ-petitioner-respondent has placed on record Annexure-2 to indicate that by office order contained in memo no. 7154 dated 4.10.2002, the General Manager-cum-Chief Engineer, Central Electric Supply Area appointed and posted the writ petitioner-respondent until further orders to discharge the duty and responsibility of Accounts Officer. The writ-petitioner submitted his joining on 5th October, 2002 in response to the letter contained in memo no. 7154 dated 4.10.2002. Vide notification contained in Annexure-3, the writ petitioner was allowed to look after the works of Accounts Officer and posted as Accounts Officer, Electrical Circle Ara until further orders. Again vide annexure-4 the writ petitioner was transferred and posted as Accounts Officer in Electrical Supply Division, Nawadah.

On the basis of the aforesaid pleading the writ-petitioner has prayed for a direction to the respondents-appellants to grant him promotion considering his continuous officiation as Accounts Officer for more than a decade as the writ petitioner was discharging the whole responsibility of Accounts Officer like any other regular Accounts Officer and as such he claimed that on the ground of "equal wages for equal work" he was entitled to the pay scale of Accounts Officer. He also claimed that he is entitled to grant of 1st, 2nd and 3rd ACPs in view of the fact that he has remained in the pay scale of Accountant for 30 years without any promotion.

On behalf of the Bihar State Power Holding Company, a counter affidavit was filed wherein stand was taken that the writ-petitioner has not passed Lekha Praveen Pariksha and as such he could not be promoted to the post of Accounts Officer. There is no denial in the counter affidavit that the writ petitioner was not posted as Accounts Officer to discharge the duty and responsibility of the post of Accounts Officer and the fact that the writ petitioner continued on the said post for more than a decade.

The Writ Court after hearing the parties and on perusal of the pleadings of the parties particularly the undisputed fact that the writ petitioner was asked to perform the duty of Accounts Officer and he continued on the said post up-to 31.1.2014, held out that the writ petitioner is entitled to the benefit of 20% officiating allowance for discharging higher responsibility.

The Writ Court in para 10 of its judgment has noted the judgment of two Division Benches of the Patna High Court in the case of Prafulla Ranjan Shrivastava Vs. The State of Bihar & Ors.: 2008(3) PLJR 144 and in the case of Dr. Nitya Gopal Bandyopathyay Vs. The State of Bihar & Ors.:2008(1) PLJR 245 and a judgment of the Apex Court in the case of Secretary-cum- Chief Engineer, Chandigarh Vs. Hari Om Sharma & Ors: (1998) 5 SCC 87. In those judgments the Division Bench of this Court as well as the Apex Court considering continuous officiation and discharge of duty on higher post, issued direction for promotion and payment of salary of the post on which the incumbent has performed the duty. The Writ Court referring to the aforesaid judgment noted that "it has been consistently held by this Court as well as the Apex Court that if the employer asked the employee to perform a duty of higher post attached with higher responsibility, he cannot be deprived from the pay attached to that post. It is admitted fact that the work of Accounts Officer is of higher responsibility than the Accountant, having a higher pay" After noting the aforesaid fact the Writ Court was economic in the matter of grant of relief to the writ petitioner. As a matter of corollary in terms of the aforesaid judgment discussed by the Writ Court, the writ petitioner should have been granted the benefit of pay attached to the post of Accounts Officer but the Writ Court instead of granting the pay scale of the post of Accounts Officer issued direction for grant of benefit of 20% officiating allowance for discharging higher responsibility. The claim with regard to officiating allowance are ordinarily meant for payment for officiating on higher post in contingency of situation and not for the purpose of posting an employee for a long period of a decade as in the instant case and then deny the benefit of regular pay scale attached to the office on which the incumbent was posted and has performed the duty and shouldered the higher responsibility. In fact, the Division Bench in the case of Prafulla Ranjan Shrivastava (supra) in para-8 has noted that Rule 103 of the Bihar Service Code was intended to take care of a situation where an employee was given additional charge on a purely temporary and transitional basis. Para-8 of the judgment is quoted below:

> "8. In our view, Rule 103 of the Code was intended to take care of a situation where an employee was given additional charge on a purely temporary and transitional basis, where permanent arrangement was not required, or for a period or pending finalization of the permanent arrangement.
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> 8.1) A number of cases are coming up before this Court where the Government has not taken steps to till up the higher post on a permanent basis. Furthermore, Rule 103 of the Code does not, to our mind, seem to contemplate a situation where the additional charge of a higher post is given. Perhaps Rule 103 covers cases of equivalent or coordinate post. In this connection, we may usefully reproduce para-12 of the judgment in Dr. Sachita Kumar Sinha (supra);
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> "12. There is also another aspect of the matter inasmuch as the Supreme Court has repeatedly asked the State to

> act as a model employer. In a welfare State where the Government is one of laws and not of men, the role of a model employer of the State is not at all compatible with its action in the present case, namely, getting the work for higher posts discharged by the petitioner and at the time of making payment trying to defeat the claim of the petitioner by raising all sorts of, if I may say so, without any disrespect, specious pleas."

It may not be out of context to refer to the judgment of the Apex Court reported in the case Arindam Chattopadhyay & Ors. Vs. State of West Bengal & Ors.: (2013) 4 SCC 152 wherein the Apex Court in similar fact situation held out that the person who perform the responsibility on higher post is entitled to pay scale of that post. Para-13 of the said judgment is quoted below:

> "13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS projects. If this would have been a stop gap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post, i.e., CDPO. However, the fact of the matter is that as on the date of filing of the Original Application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It

> is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs. since July, 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions."

In the aforesaid backdrop of the fact it appears that the Writ Court has only allowed minimum relief in the nature of officiating allowance to the writ petitioner instead of granting the pay scale for discharging higher duty and responsibility of the post of Accounts Officer, yet the Bihar State Power Holding Company challenged the order of the Writ Court in the instant letters Patent Appeal.

In our considered opinion, the Writ Court by refusing to grant relief for payment of salary attached to the office of Accounts Officer to the writ petitioner, has in fact granted relief to the Power Holding Company but the Power Holding Company acting contrary to the concept of model employer filed the instant Letters Patent Appeal to deprive the writ petitioner-respondent even the minimum benefit which was granted by the Writ Court in the nature of officiating allowance for discharging the higher responsibility.

We have also considered the reason assigned by the Writ Court in detail for allowing officiating allowance to the writ petitioner and we find no error in the consideration of the Writ Court as to entitlement of the relief for continuous officiation for more than a decade and discharging higher responsibility and duty not for a limited period and in fortuitous circumstance but for a decade and discharged all the responsibility of a regular Account Officer.

Accordingly, we do not find any merit in the Letters Patent Appeal. It is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

S.Pandey/-

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