

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1418 of 2012

In
Civil Writ Jurisdiction Case No.10630 of 2009

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1. The State Of Bihar
 2. Secretary, Road Construction Department, Govt. Of Bihar, Patna
 3. The Engineer In Chief, Road Construction Department, Govt. Of Bihar, Patna
 4. The Deputy Secretary, Road Construction Department, Govt. Of Bihar, Patna
 5. Superintending Engineer, Road Construction Department, Govt. Of Bihar, Patna
 6. The Executive Engineer, Road Construction Division, Buxar

... .. Appellant/s

Versus

Baliram Pandey Son Of Late Sri Ram Manohar Pandey Resident Of Village-
Dharam Khandha, P.S.- Dawath, District- Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K.Verma, AAG-3 Mr. Suman Kumar Jha, AC to AAG-3
For the Respondent/s	:	Mr. Ardhendu Mauli Kr. Prasad Advocate Mr. Shashishekhar, Advocate Mr. Ravi Verma, Advocate Mr. Abhay Shankar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 14-11-2017

The present appeal has been filed under Clause 10 of the Letters Patent of Patna High Court Rules by the State of Bihar against the order of the Writ Court dated 16.08.2011 passed in CWJC No. 10630 of 2009, whereby the Writ Court allowed the writ application filed by the writ petitioner-respondent herein and directed the respondents-appellants herein to grant Time Bound



Promotion and consequential increment to be paid within a period of two months from the date of receipt/presentation of the copy of the order.

2. Mr. P.K. Verma, AAG-3 appearing on behalf of the appellants submitted that the respondent was not entitled to exemption from passing the departmental examination. Referring to the peculiar facts and circumstances of the case he submitted that for grant of Time Bound Promotion the respondent was required to pass the departmental examination in view of the mandatory requirement under PWD Code Part (II) para- 20(b). He submitted that notification dated 15.5.1992 with regard to grant of exemption from passing departmental examination is not as a matter of course but subject to the two conditions (1) that there is no proceeding pending against the employee and (2) that he has to avail opportunity of appearing at the examination but not passed the examination before submitting application for exemption from passing departmental examination.

3. Mr. Verma referring to the peculiar facts of this case submitted that in connection with Doranda P.S. Case No. 205 of 1982 dated 30.7.1982, the respondent was put under suspension on 9.11.1984 and on 14.5.1990 the departmental proceeding was initiated against him. Since the departmental proceeding as well as



criminal case were based on the same set of facts and charges, the departmental proceeding was stayed vide order dated 20.5.1992. Thus the departmental proceeding was stayed on the ground of pendency of the criminal case and in the said criminal case sanction was granted and the same is still pending.

4. Mr. Verma submitted that earlier the writ petitioner had filed CWJC No. 4372 of 1987 for grant of promotion. The said writ petition was dismissed on account of pendency of departmental proceeding vide order dated 11.5.2000, the LPA and the SLP preferred against the order passed in CWJC No. 4372 of 1987 were also dismissed and as such the decision of the Writ Court dated 11.5.2000 is clinching on the point that the departmental proceeding was pending against the writ petitioner and was a fact and in view of the conditions for grant of exemption under notification dated 15.5.1992, the writ petitioner was not eligible and accordingly the application for grant of exemption was rejected by the respondent-appellants herein. He submitted that the Writ Court committed error in allowing the writ application and directing grant of First Time Bound Promotion and consequential increments without quashing of the order dated 19.5.2009, whereby the claim of the writ petitioner for exemption was rejected.



5. Counsel appearing on behalf of the writ petitioner-respondent, Mr. Ardhendu Mauli Kumar Prasad submitted that the Writ Court has allowed the writ petition and as such the prayer of the writ petitioner-respondent for quashing of the order dated 19.5.2009 is deemed to be allowed and there is no substance in the submission of the appellants that the Writ Court has not quashed the order rejecting the petition of the writ petitioner for exemption from passing the departmental examination. He submitted that on the date of application neither the criminal case nor the departmental proceeding was pending and in view of the law laid down in the case of **Union of India Vs. K.V. Janki Raman AIR 1991 SC 2010**, no proceeding was pending as on that date cognizance was not taken, the criminal case cannot be taken as pending on that date nor the departmental proceeding can be considered as pending as the departmental proceeding was stayed by the Court and as such he submitted that the order rejecting the petition for exemption was arbitrary and as such the direction issued by the writ court is fully justified and in accordance with law.

6. We have heard the submissions of the parties and on consideration of the entire materials available on the record, we find that the departmental proceeding was initiated after framing



of the charges. However, on account of pendency of the criminal case the writ petitioner got the departmental proceeding stayed. Therefore, we have no manner of doubt in accepting the submission of Mr. Verma, senior counsel appearing on behalf of the appellants-State that the writ petitioner respondent cannot play hot and cold together. For the purpose of stay of the departmental proceeding, the writ petitioner placed reliance of pendency of the criminal case on the same charge, then the writ petitioner cannot take advantage of his submission of pendency of criminal case to get the departmental proceeding stayed and make submission that departmental proceeding was not pending as it was stayed on the ground of criminal case pending on the same set of fact and make submission that criminal case was not pending in view of the judgment of the Supreme Court in the case of **Union of India Vs. K.V. Janki Raman AIR 1991 SC 2010**. We also find substance in the submission of Mr. Verma that the order rejecting the petition for exemption was challenged by the writ petitioner specifically in CWJC No. 10630 of 2009 vide Annexure-7 and despite specific challenge as to the order dated 19.5.2009, the said order was not interfered with nor there is any consideration of the order rejecting the petition for grant of exemption by the writ court.



7. In view of the aforesaid, we are of the view that allowing the writ application holding the petitioner entitled to First Time Bound Promotion without quashing of the order rejecting the claim for grant of exemption from passing the departmental examination was not justified. Considering the totality of the fact situation and the fact highlighted by Mr. Verma, learned Additional Advocate General No. 3 that the writ petitioner was subjected to criminal case in Doranda (Ranchi) P.S. Case No. 205/1982 for the allegation of defalcation and the competent authority has granted sanction for prosecution against him on 26.4.1996, the direction of the writ court to grant First Time Bond Promotion and payment of increment was uncalled for and there was no illegality in the order rejecting exemption dated 19.5.2009 (Annexure-7).

8. Accordingly, we allow the Letters Patent Appeal and set aside the order of the Writ Court dated 16.8.2011 passed in CWJC No. 10630 of 2009.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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