

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.692 of 2015

Arising out

Civil Writ Jurisdiction Case No. 17711 of 2009

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Shailendra Kumar, Son of Jainarayan Prasad, Resident of Parahi, P.O.- Parrahi,
District - sheohar, Presently Posted as District Programme Officer (Education),
Shekhpura.

.... Appellant / Respondent

Versus

1. The State of Bihar
2. The Principal Secretary (Human Resources Development Department), Govt. of Bihar, Patna.
3. The Director (Administration) cum Joint Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
4. Bidyanand Thakur, Son of Sri Khusilal Thakur, Resident of Village- Laharnia, P.S. - Triveniganj, District- Supaul, Presently posted Programme Officer, Banka.

.... Respondents /Writ Petitioner

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Appearance:

For the Appellant/s : Mr. Shekhar Singh, Advocate and
Mr. Manindra Nath Tiwari, Advocate.

For the Respondents-State: Mr. Anil Kumar, AC to GP 20.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 25-07-2017

Heard counsel for the appellant and counsel for the State.

Despite valid service of notice upon respondent no. 4, the private respondent has chosen not to appear. The Court is, therefore, left with no option but to proceed with the appeal which has been preferred against the order dated 23.08.2011 passed in CWJC No. 17711 of 2009.

The learned Single Judge, in absence of any assistance on



behalf of the present appellant, decided the Writ Application in favour of the petitioner holding him to be senior to the present appellant on the ground that the private respondent even though was a recommendee of the 45th Batch of Examination conducted by the Bihar Public Service Commission was required to be declared senior to the appellant, even though he was successful in the 44th Batch Competitive Examination, because the private respondent joined the service prior to the present appellant.

Counsel for the appellant, who was missing in action earlier in matter of assistance, has now brought evidence to show that the delay in his joining was caused by an interim order passed by a learned Single Judge on 05.04.2004 (a copy of which is Annexure-3) and that interim order lost its meaning after dismissal of the Writ Application by a Division Bench on 19.05.2005 (a copy of which is Annexure-5). Since the joining of the present appellant was put in abeyance because of a judicial order which lost its meaning and effect due to dismissal of the Writ Application, the joining of the appellant got deferred. However, it is evident that the State Government for the right reason has taken a decision (which is Annexure-7 to the LPA) treating the candidature of the appellant, who was a recommendee of the 44th Batch, to be senior to the private respondent.

In view of the above facts and since the learned Single



Judge did not have the privilege of the background of the litigation which caused delay in joining of the appellant, the decision so rendered cannot be said to be bad in the given facts. However, more clarity has emerged and the Court is satisfied that the impugned order is required to be interfered with a declaration that the appellant of the 44th Batch has to be treated senior to the private respondent, who is of the 45th Batch, since the appellant cannot suffer because of the delay caused due to the interim order passed by the High Court which ultimately culminated into dismissal and vacation of the interim order by the Division Bench, subsequently.

Appeal is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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