IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.525 of 2016
IN
Civil Writ Jurisdiction Case No. 309 of 2011

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1. The State of Bihar.
2. The Secretary, Finance (P.C.C.), Department, Government of Bihar, Patna.
3. The Secretary, the Department of Water Resources, Government of Bihar, Patna.
4. The Superintending Engineer, Drainage Investigation Circle, Muzaffarpur.

.... Respondents- Appellant/s

Versus

1. Smt. Krishna Devi, wife of late Dharnidhar Singh, resident of Village-Harigoan, P.O. Samia Barchatta, P.S. Jagdishpur, District-Bhojpur, Arrah, presently her son Chandrajeet Kumar, C/o-Harbans Rai, Atma Ram Lane, P.O.- G.P.O., P.S. Jakkanpur, District_Patna.
2. Chandrajeet Kumar, son of late Dharnidhar Singh, resident of Mohalla-Atma Ram Lane, P.O. G.P.O., P.s. Jakkanpur, District-Patna.

.... Writ Petitioners/-Respondent/s

3. The Accountant General, Bihar, Patna.

…. … Respondent/ Respondent.

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Appearance :
For the Appellant/s : Mr. Sajid Salim Khan, SC -25
For the Respondent No.2 : Mr. Sri Krishna Ranjan, Advocate

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 16-08-2017

Re.: Interlocutory Application No.2284 of 2016

The delay of 10 months and 6 days in filing of this Appeal is condoned.

Interlocutory Application stands allowed and disposed of.

Re.: Letters Patent Appeal No.525 of 2016

This appeal filed by the State Government seeking exception to an order dated 27.03.2015 passed by the Writ Court in

CWJC No.309 of 2011 whereby a writ petition filed by a widowed lady, respondent herein, in the matter of granting exemption from passing the departmental examination to her late husband for grant of promotion has been allowed and granted monetary benefit treating her husband to be exempted from passing the departmental examination.

The facts in nutshell go to show that late Dharnidhar Singh was working as an Assistant Engineer in the Water Resources Department. On 31st of January, 1996, he retired on attaining the age of superannuation. While in service, as he could not pass the departmental examination he was not allowed certain monetary benefit, though the benefit could be availed of by him in the light of certain Government instructions contained in the Circular dated 14.09.1992 whereunder a Government employee, who has crossed the age of 50 years and who continued to remain in service, could be granted the monetary benefit of promotion in case he fails to pass the departmental examination.

While the employee was still alive, he filed CWJC No.11775 of 1999 and claimed that he was entitled to the monetary benefit after grant of exemption from passing the departmental examination as per the Government Circular dated 14.09.1992. The writ petition was disposed of vide order dated 04.08.2005 and the order of recovery with regard to monetary benefit already granted was set aside by the Writ Court and the matter was remanded back for reconsideration.

After reconsideration on 19.10.2006, vide Annexure-11, as the request of the petitioner, widowed lady, for grant of benefit to her husband in the matter of exemption from passing the departmental examination was rejected, she again filed the writ petition. The Writ Court allowed the writ petition by holding that the employee was entitled to the benefit as per the Government instruction dated 14.09.1992 and challenging the same, this appeal has been filed by the State Government.

The ground canvassed by the State Government was that in the order passed vide Annexure-11 on 19.10.2006, it is clearly indicated that while the employee was alive and in service, he never claimed for grant of exemption from passing the departmental exemption and it was only after his retirement he claimed grant of exemption from passing the departmental examination and it was also indicated that he did not give reason why he was entitled for exemption.

The learned Writ Court found after taking into consideration the instruction issued by the State Government on 14.09.1992 that the employee was entitled for grant of exemption from passing the departmental examination and on scrutiny of the records, we find that even before his retirement, the employee vide Annexure R/B on 07th May, 1995, had sought exemption and in his application he has indicated that he has crossed the age of 50 years, he had appeared for the departmental examination on three occasions which he could not pass, but he had passed certain papers in 1992 and 1995 examination and claimed benefit of the exemption. That apart, the Supreme Court also in the case of certain other employee, namely Kusheswar Nath Pandey, has considered similar question and granted the benefit of monetary benefit by granting exemption to the employee as is indicated by the respondent in her counter affidavit vide Annexure- R/D, the judgment of the Hon'ble Supreme Court in the case of **Kusheswar Nath Pandey Versus State of Bihar and others**, (2013) 12 SCC 580.

We find that while rejecting the claim of the respondent's husband vide Annexure-11 on 19.10.2006, the facts as stated do not reflect the correct position. In fact, while he was in service, the employee claimed benefit of exemption as is evident from Annexure-R/B dated 07.05.1995 and after examining the case of the respondent herein in the backdrop of these facts and the Circular dated 14.09.1992, the learned Writ Court granted benefit of exemption from passing the departmental examination. In doing so, we find no error committed by the writ Court in granting monetary benefit to the widowed lady. The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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