IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1872 of 2015
IN
Civil Writ Jurisdiction Case No. 5998 of 2008

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1. Krishna Kumar Singh Son of Late Akalu Singh, Resident of New Patliputra Colony, P.O. & P.S.- Patliputra Colony, District- Patna

.... Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Member of Board of Revenue, Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
4. The Finance Commissioner-cum-Principal Secretary, Government of Bihar, Patna
5. The Commissioner of Commercial Taxes cum Principal Secretary, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.A.Nasarwarsi
Mr Brij Nandan Prasad

For the Respondent/s : Mr. Anshuman Singh, AC to PAAG 1

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 14-02-2017

Delay of 149 days is condoned. I.A. No.8425 of 2015 is allowed. The matter is thereafter taken up on the merits.

The appeal is against the judgment dated 12.3.2015 passed by a learned Single Judge in CWJC No.5998 of 2008. The prayer of the petitioner for quashing Memo No.850 dated 30.1.2008 passed by the Finance Commissioner, Government of Bihar as well as a direction for grant of promotion to the petitioner- appellant from back date at least from 12.4.2002 on the post of Additional

Commissioner, has been negated.

Petitioner has been granted promotion on the post of Additional Commissioner with effect from 17.6.2006 and thereafter he superannuated on 31.8.2007. His effort is to shift the date of promotion for obvious object in mind of earning a few dollars more after his retirement.

The sum essence of the submission of learned counsel for the appellant is that he has right for promotion from the date a vacancy arose on the post of Additional Commissioner, Commercial Taxes. According to him, the vacancy arose on 15.11.2000, if not from 12.4.2002 but delay in consideration and grant has vitally affected the right and the entitlement of the appellant.

From the materials, which have come on record, as well as on verification, counsel for the appellant does not indicate that any person junior to the appellant had been granted such a benefit of promotion prior to the date of his promotion on the post of Additional Commissioner. There is no trite law that the promotion must accrue on the date an employee claims or the so-called vacancy occurs. There are many factors in consideration for promotion. An employee can only claim a right for consideration and not promotion as a matter of course.

From the perusal of the judgment of the learned Single Judge as well as the stand of the State, which has also been reflected in the said decision, it is evident that the post on which the appellant is eyeing a promotion from earlier date was not even available in the State of Bihar. This situation arose after the bifurcation of the State of Bihar into Bihar and Jharkhand. Only after five posts in cadre of Additional Commissioners of Commercial Taxes were created that the cases of eligible candidates were considered and the appellant earned the benefit of such a promotion.

In absence of any element of arbitrariness emerging from the facts or the law as to why the appellant should be promoted from a back date, the order of the learned Single Judge rejecting such a prayer or interfering with the reasoned order of rejection of such prayer by the Finance Commissioner cannot be said to be erroneous in any manner. The order of the learned Single Judge does not need any interference.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.2.2017
Transmission Date	NA