

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.104 of 2018
In
Civil Writ Jurisdiction Case No. 10241 of 2008
With
Interlocutory Application No. 453 of 2018.

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1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Govt. of Bihar, Patna.
 2. The Chief Engineer, Tubewell, Muzaffarpur.
 3. The Executive Engineer, Tubewell Division, Muzaffarpur.

.... Respondents / Appellants

Versus

Raghubansh Rai, Son of Late Kamladhari Rai, Resident of Majhauri Khurd, P.O. + P.S. - Desari in the district of Vaishali.

.... Petitioner / Respondent

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Appearance:

For the Appellant/s : Mr. Kumar Pankaj, AC to SC 5.
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 11-04-2018

Re. I.A. No. 453 of 2018.

1. This Interlocutory Application has been preferred for condonation of delay of 283 days.

2. For the reasons stated in the application seeking condonation of delay, we condone the delay of 283 days in filing of the present Letters Patent Appeal.

3. The Interlocutory Application stands disposed of accordingly.

Re. L.P.A. No. 104 of 2018.



4. The Letters Patent Appeal has been preferred for setting aside the judgment dated 09.03.2017 passed by the learned Writ Court in CWJC No. 10241 of 2008.

5. In the facts of the case as the learned Writ Court found that the petitioner had already superannuated w.e.f. 29.02.2008 as Driver Grade-I from the Office of the Executive Engineer, Tubewell Division, Muzaffarpur which carries a pay scale of Rs. 4500-7000/-, the petitioner rightly demanded that he should be allowed the pay scale of Rs. 4500-7000/- which was applicable w.e.f. 08.11.1996 for the vehicle Driver Grade-I. As the representation filed by the petitioner was not considered, he was constrained to approach this Court by filing the present Writ Petition. The petitioner claimed benefits under the provision of Bihar State Employees Service Conditions (Assured Career Progression Scheme) Rules, 2003.

6. It was the stand of the State that the petitioner was incorrectly granted the status of Truck Driver Grade-I and this was done by the Executive Engineer since the District Accounts Officer had made certain objections.

7. The learned Writ Court found that in course of argument though the learned counsel for the State, referring to the copy of the Service Book, tried to persuade the Court that it was a case of interpolation in the Service Book but, in fact, in the Counter Affidavit



filed on behalf of the respondent State no such plea was taken. In absence of any specific plea to this effect in any of the Counter Affidavits filed on behalf of the respondents the Court rejected the contention of the State that the Service Book of the petitioner was interpolated. The Writ Court found that the pay-scale of Driver Grade-I was enhanced to Rs. 4500-7000/- and as the petitioner was functioning as Driver Grade-I there was no reason for the respondents to deny the pay scale of Driver Grade-I to the petitioner as per the statutory provision. Regarding the claim for A.C.P. it was found that the petitioner was paid 1st and 2nd A.C.P.

8. In appeal before us, learned counsel representing the State has once again contended that the petitioner was never placed as Driver Grade-I and he was not posted or continued as Driver Grade-I, therefore, the learned Writ Court has failed to appreciate that the respondent no. 1 was working only in the pay scale of Driver Grade-I and no post of Driver Grade-I was sanctioned at that point of time for the Tubewell Division.

9. We have heard learned counsel representing the appellant and perused the records. The basic issue which remains unanswered by the appellant is that if the Service Book of the petitioner shows that he was posted as vehicle Driver Grade-I and such entry was made in the Service Book by the Executive Engineer



after an objection was raised by the District Accounts Officer in order to meet that objection and the petitioner retired as vehicle Driver Grade-I, for which a scale was notified in terms of the Rules, why the petitioner-respondent no. 1 may be allowed to suffer in respect of the monetary benefits which were attached to the post on which he had been working as per his Service Book. The learned Writ Court has recorded a finding and the same has not been questioned by the appellants that in the Counter Affidavit filed on behalf of the respondent-State in the Writ Court there was no plea that the Service Book contained any interpolation. We are not persuaded to interfere with the judgment of the learned Writ Court.

10. The Appeal has no merit. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.04.2018
Transmission Date	N/A

