IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.44 of 2019
In
Letters Patent Appeal No.767 of 2017

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1. The State of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Additional Secretary, Department of Finance, Govt. of Bihar, Patna
4. The Deputy Secretary, Department of Finance, Govt. of Bihar, Patna (Treasury)
5. The District Magistrate, Patna
6. The District Magistrate, Gaya
7. The Treasury Officer, Secretariat Treasury, Vikash Bhawan, Patna
8. The Treasury Officer, Gaya, District- Gaya
9. The Sub- Treasury Officer, Sherghati, District- Gaya

... ... Petitioner/s

Versus

1. Anit Kumar Singh son of Late Panchanand Singh R/O Ramavtar Apartment, Ashiyana Ramnagri More, PS- Rajiv Nagar, District- Patna
2. Raj Kumar son of Late Prem Chandra R/o village- Bakarganj, Moharampur, PS- Pirbahore, District- Patna
3. Vijay Kumar Sinha son of Late Bindeshwari Prasad Sinha R/O Diet Campus, Mohalla-Panchayati Akhara Gaya PS-Kotwali, District- Gaya
4. Rana Lalan Narain Singh son of Late Jaydutt Narain Singh R/O Mohalla Chand chaura, Gaya, P.S- Civil Line, District- Gaya

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Parijat Saurav (Ac To Aag 10)
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR JUSTICE ASHUTOSH KUMAR)

Date : 31-07-2019

The State/petitioners have sought review of the judgment dated 27.09.2018 passed in LPA No. 767

of 2017 arising out of C.W.J.C. No. 5021 of 2011 on the ground of the judgment being based solely upon the judgment dated 20.07.2011 passed in Prabhat Shankar Poddar versus State of Bihar (C.W.J.C. No. 8171 of 2007) and LPA No. 2006 of 2011 arising out of the aforesaid case, which has yet not attained finality.

2. The review of the judgment is further sought on the ground that the Division Bench did not appreciate the difference between Treasury Clerks and Clerks in the Treasury, about which no definitive pronouncement was given in the judgment which had been relied upon by the Division Bench.

3. The judgment impugned sustains the order passed by the learned Single Judge dated 25.10.2016 in C.W.J.C. No. 5021 of 2011 whereby the notification contained in Memo No. 2856 dated 06.04.2016 issued under the signature of Secretary (Resources) of the Finance Department has been set aside and the benefits of Bihar State Employees Service Condition (Assured

Regular Progression Scheme) Rules, 2003 has been given to such employees also who have been appointed in the Treasury on compassionate ground.

4. The original writ petitioners were appointed on the post of Clerk on compassionate ground initially on the pay-scale of 580-860. They claimed the benefits of first ACP in the pay-scale of 5500-9000 with effect from 09.08.1999 and second ACP in the pay-scale of 6500-10,500 after fourteen years of service.

5. The petitioners also challenged the order dated 06.04.2016 contained in Memo No. 2856 issued by the Secretary, Resources of the Finance Department that the benefits of the ACP rules in view of the departmental Circular No. 163 dated 08.01.2016 shall not be accorded to such Clerks who have been appointed on compassionate ground as they are not Treasury Clerks but have been posted as Clerks in the Treasury.

6. This resolution of the government in its Finance Department was challenged by the original writ

petitioners vide C.W.J.C. No. 5021 of 2011 and the learned Single Judge vide judgment dated 25.10.2016 taking note of the fact that an identical matter raised in C.W.J.C. No. 6751 of 2007 was allowed in terms of a judgment of this Court in Prabhat Shankar Poddar versus State of Bihar & Ors (C.W.J.C. No. 817 of 2007) which stood affirmed in LPA No. 2006 of 2011, allowed the writ petition and quashed the notification dated 06.04.2016.

7. In Prabhat Shankar Poddar versus State of Bihar & Ors (C.W.J.C. No. 8171 of 2007), it may be recalled, it was held by a Bench of this Court that the Treasury Clerks would be entitled to the benefits of the ACP rules of 2003.

8. The aforesaid judgment of the learned Single Judge has been affirmed by the Division Bench by judgment dated 27.09.2018, against which this review petition has been filed.

9. It has been held by the Division Bench

that there is no justification for making any distinction between regularly appointed employees and those who have been appointed on compassionate ground. Once they enter the service, the distinction about the mode of appointment obliterates and the appointees on the compassionate ground have necessarily to be treated similarly.

10. It has been urged on behalf of the State/petitioners that in the year 1979, a decision was taken by the government to fill-up the post of Treasury Clerk under the establishment of Treasury by giving option to those who were posted in different establishments under different Collectorates. A total of 265 Clerks opted for being inducted as Treasury Clerk under the establishment of Treasury in the year 1979.

11. A writ petition being C.W.J.C. No. 3063 of 1992 (Dhananjay Sharma & Ors versus State of Bihar & Ors) was filed by 324 Clerks which included those 265 Clerks who had given the option and were

inducted as Treasury Clerks for a direction to implement the recommendations of the Fitment Appellate Committee. The aforesaid writ petition was allowed and a direction was given to implement the recommendations of the Fitment Appellate Committee. Another direction was given in the aforesaid judgment viz. to provide pay-scale of 5000-8000 to the writ petitioners therein.

12. The learned advocate appearing for the State/petitioners has submitted that there were patently two categories of Treasury Clerks viz. one who had entered the service by exercising their option given to them in the year 1979 and those who were appointed on compassionate ground. Those persons, who were appointed on compassionate grounds were not made Treasury Clerks but they were adjusted as Clerks in the Treasury, but only after 1979.

13. It has further been submitted that the Fitment Appellate Committee's report clearly made a distinction between such inductees who exercised the

option of joining as Treasury Clerks and the others who were appointed on compassionate ground and such inductees on option had to be treated differently. It was thus urged that since in the case of Dhananjay Sharma & Ors versus State of Bihar & Ors (C.W.J.C. No. 3063 of 1992), it was directed that the recommendations of the Fitment Appellate Committee's report had to be implemented, it presupposed that the distinction so spelt out in the Fitment Appellate Committee Report had tacitly been recognized by the Bench. In that view of the matter, the second part of the direction in Dhananjay Sharma (supra) was in conflict with the first part of the direction.

14. The State preferred LPA No. 165 of 2002 against the order passed by the learned Single Judge in Dhananjay Sharma & Ors versus State of Bihar & Ors (C.W.J.C. No. 3063 of 1992) which was dismissed whereafter SLP No. 138 of 2011 which was filed before the Supreme Court also stood dismissed.

15. On these grounds, it has been asserted by the State/petitioners that in none of the litigations, the distinction between such inductees as Treasury Clerks and compassionate appointees was taken note of and there was no application of mind with respect to the distinction between Treasury Clerks and Clerks in Treasury.

16. On hearing the parties, we are of the view that though there does appear to be some distinction between two class of employees and the government could have treated them separately so far as pay-scale is concerned, but once a decision has been taken to afford such benefits of the scheme of financial progression available to all Treasury Clerks, any further distinction on the basis of source of appointment would amount to reverting such persons who have been the recipients of the benefits to a lesser scale and if such a decision is taken, recovery would have to be effected. This would unnecessary create litigation which is neither

advisable nor expedient.

17. These issues/arguments were available to the State/petitioners and from the judgment of the Division Bench, it appears that such argument was advanced and answered by holding that the circular/notification dated 06.04.2016, not granting the benefits of ACP to compassionate appointees, was in teeth of the earlier decisions of the learned Single Judge, which was affirmed by the Division Bench as also by the Supreme Court.

18. The impugned judgment has also taken note of the fact that there should not be any discrimination in grant of the benefit of ACP. Once a person is appointed in the department, even though on compassionate grounds, he would be entitled for the benefits.

19. The power of review inheres in every Court of plenary jurisdiction but such power is only for preventing miscarriage of justice or to correct grave and

palpable errors committed by it. There are definite limitations to exercise of the power of review and it could be exercised only on the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within the knowledge of a person seeking review, or could not be produced by him at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of record is found or on any such analogous grounds. A review of a judgment cannot be made on the ground that the decision was erroneous on merits as this would fall in the domain of appeal.

20. From the arguments advanced on behalf of the State/petitioners, it appears that the review has been sought as if for the purpose of re-hearing and for a fresh decision in the case. The grounds for review were available to the State/petitioners which was never agitated. Even otherwise, we are of the view that taking any other decision in not extending the benefits of a

benevolent scheme to compassionate appointees would not be just and proper, once the issue has been set at rest till the Supreme Court. Once appointment is made on a post, the source of appointment looses its significance, specially for the purposes of application of beneficent provisions. The distinction between the Treasury Clerks and Clerks in Treasury also appear to be specious and does not have any rationale.

21. Thus, for the reasons that the judgment under review does not suffer from any palpable error of record or that it is a result of oversight, we are not inclined to interfere/review the judgment.

22. The petition is dismissed for the reasons aforesaid.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Shageer/-

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