

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1706 of 2015

Shailendra Kumar, son of Late Rameshwar Singh, resident of village- Manika
P.S- Mushahari, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Industry Department, Government of Bihar, Patna.
3. The Additional Secretary, Industry Department, Government of Bihar, Patna.
4. The Director, Industry Department, Government of Bihar, Patna.
5. The Managing Director, District Industries Centre, Muzaffarpur, District-
Muzaffarpur.
6. The Accountant General Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mayank Rukhaiyar, Adv. Mr. Anis Akhtar, Adv.
For the Respondent-State:		Mr. Md. Raisul Haque, SC-10. Mr. Md. Obaidullah, AC to SC-10.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date : 22-01-2019

Heard the parties.

This intra-court appeal arises from a judgment and order dated 11.08.2015 of a learned Single Judge passed in CWJC No.10090 of 2008 whereby the writ petition was dismissed.

Pleadings on record briefly noted reflects that the Government of Bihar which had constituted District Industries Centres in different districts of the State, took a decision to constitute such centres also in the district of Gaya and Muzaffarpur which were being run by Non-Governmental



Organization. A decision however was also taken, that no governmental facility would be given to the employees working in these Non-Governmental Organizations.

The appellant- writ petitioner was an employee of the Non-Governmental Organization engaged to run the District Industries Centre at Muzaffarpur and was serving on the post of Economic Investigator in the pay-scale of Rs.5500-9000/-.

It is feeling aggrieved by the decision of the State Government that the effected employees moved this Court through a batch of writ petitions arising from CWJC No.2410 of 1994, CWJC No.3066 of 1994 and CWJC No.3712 of 1994 which were disposed of with a direction to the State to consider the absorption of these employees. Orders were issued accordingly but since the appellant-writ petitioner was not a part of such absorption order that he moved separately through CWJC No.5289 of 2003 and vide order passed on 21.01.2004 enclosed at Annexure-3, the writ petition was disposed of with similar direction to the Secretary, Industry Department and the Director, Industry Department to consider the case of the appellant- writ petitioner for absorption in government service in accordance with law.

The State feeling aggrieved by the order of the writ



Court, moved in appeal giving rise to LPA No.403 of 2004 and which was dismissed by order dated 26.03.2004 enclosed at Annexure-4. Yet not satisfied the State moved the Supreme Court in Special Leave Petition which again was dismissed vide order enclosed at Annexure-5.

It is thereafter that the order of absorption was passed by the State in its Industries Department bearing Memo No.868 dated 19.04.2006 enclosed at Annexure-6 whereby the appellant- writ petitioner was absorbed against a post of Assistant Receptionist in the pay scale of Rs.3050-4590/- with effect from 01.01.1997 i.e. the date on which the appellant- writ petitioner joined the District Industries Centre, Muzaffarpur. This order of absorption has not satisfied the appellant- writ petitioner either on the status or the pay-scale attached thereto and it is feeling so aggrieved that he again has approached this Court through the writ petition in question which has been dismissed and hence this appeal.

We have considered the submissions advanced by learned counsel appearing on behalf of the appellant-writ petitioner as well as the counsel representing the State and we have perused the reasons assigned by the learned Single Judge to dismiss the writ petition.



The foundation for the argument advanced by learned counsel appearing for the appellant-writ petitioner to espouse the cause of the appellant-writ petitioner for a higher pay-scale is by making reference to the observation present in the order of the learned Single Judge in the previous round of litigation enclosed at Annexure-3 to the writ petition as well as the stand taken by the State in their counter affidavit.

According to the learned counsel for the appellant-writ petitioner since there is nothing on record to dispute that the appellant-writ petitioner rightly held the post of Economic Investigator which carried the pay-scale of Rs.5500-9000/-, the respondents-State while considering the absorption of the appellant-writ petitioner in the light of the order passed in the previous round of litigation could not have travelled beyond the records to dis-entitle him either on the post or on the scale.

Per contra, it is the submission of learned counsel for the State that it is acting pursuant to the order of this court as well as the availability of the post that the order of absorption has been passed and the post held by the appellant- writ petitioner prior to his absorption in government service as well as the scale would not be binding on the State in such circumstances.



It is not in dispute that the petitioner was working under a Non-Governmental Organization before his absorption in government service. The reasons for the absorption we have already explained in reference to the counter affidavit of the State and it is because the State took a decision to run the District Industries Centres that employees functioning in similar centre but under the employment of private agency canvassed for absorption in the government service in the light of the decision so taken by the government to operate these centres and vide order passed by this Court in earlier proceeding, the State was advised to consider their absorption. Similar order was also passed in the case of appellant-writ petitioner.

Now it is acting pursuant to the order passed by this Court for considering the case of the appellant-writ petitioner for absorption that the absorption order dated 19.04.2006 is passed bearing note of the services rendered by the appellant-writ petitioner in the District Industry Centre with effect from 01.01.1997. However, the absorption is against the post of Assistant Receptionist carrying a pay-scale of Rs. 3050-4590/-.

It is not in dispute that the post of Assistant Receptionist carried such scale and in which view of the matter even if the appellant-writ petitioner was drawing a higher pay-



scale while in service of the private agency, this pay-scale could not have been granted to the appellant-writ petitioner as against a post which carried a lower pay-scale.

The prayer made by the appellant-writ petitioner for his absorption against the post of Economic Investigator in view of his posting order at Annexure-1 to the writ petition also does not merit consideration because these aspects being much present at the time of consideration of his claim for absorption in previous round of litigation but all that the learned Single Judge did is to direct the State to consider his case for absorption and not against a particular post.

In such view of the matter and where a decision has been taken by the State for absorption of the appellant-writ petitioner against a post of Assistant Receptionist which carried a pay-scale of Rs.3050-4590/-, the choice was entirely for the appellant-writ petitioner either to accept the offer or to decline but in the nature of the exercise that has been undertaken, neither the petitioner could have demanded a post in particular or the scale in particular, for absorption which discretion was entirely at the disposal of the State Government which has been properly discharged vide Annexure-6 and has been rightly not interfered with, by the learned Single Judge.



In our considered opinion, had it been a case where the State had requisitioned the service of the appellant-writ petitioner, which was followed by his absorption, may be the situation would have been different but bearing note of the nature of exercise undertaken by the State to absorb those who were earlier employed privately to run the District Industries Centres, we are satisfied with the obligation discharged by the State Government.

The appeal is accordingly dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Anjula/Skpathak

AFR/NAFR	AFR
CAV DATE	NA
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