

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.75 of 2021
In
Civil Writ Jurisdiction Case No.15933 of 2018

1. The State of Bihar.
2. The Principal Secretary, Finance Department, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Bhagalpur.
5. The Superintendent of Police, Bhagalpur.

... .. Appellants/ respondents

Versus

1. Bishwanath Ram, Son of Late Muni Ram, Resident of Village- Dariyapur,
P.O.- Dariyapur, Via- Dhannar, P.S.- Arrah, District- Bhojpur.

.....1st Set respondent / petitioner

2. The State of Jharkhand through the Chief Secretary, Jharkhand, Ranchi.
3. The Director General of Police, Jharkhand at Ranchi.
4. The Superintendent of Police, Palamu, Jharkhand.
5. The Senior Superintendent of Police, Ranchi, Jharkhand.
6. The Accountant General, Bihar, Birchand Patel Road, Patna.

..2nd Set respondents/ Respondent/s

Appearance :

For the Appellant/s	:	Mr. Harshvardhan Shivsundaram (AC to SC 8)
For the Respondent/s	:	Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 10-09-2021

I.A. No.1 of 2021:

Heard.

This interlocutory application has been filed by the appellants/respondents for condoning the delay of 166 days in preferring the present LPA.

For the reasons, as stated in aforesaid interlocutory application, the delay in preferring the present LPA is condoned.

I.A. No. 1 of 2021 stands allowed.

LPA No.75 of 2021:

Heard.

Being aggrieved by judgement and order dated 08.06.2020 passed in C.W.J.C. No.15933 of 2018 passed by learned Single Judge of this Hon'ble Court, appellants/respondents (State of Bihar) has preferred this L.P.A.

Respondent/employee was appointed in the year 1972 on the post of constable in Bihar Police having educational qualification as Middle Pass, he was promoted to the post of Hawaldar and Jamadar in the year 1982 and 1998 and lastly, he was promoted to the post of Subedar and he retired on 5.1.1999 from the post of Subedar and thereafter pension payment order and death-cum-retirement gratuity payment order was issued by

the Accountant General vide memo no.14369 dated 22.10.2002 in which, the pension of the respondent/employee was fixed as Rs. 3250/- treating him to be constable against which, he represented the pension sanctioning authority that he retired from the post of Subedar and his last pay drawn was Rs. 8,500/- and his pension has been fixed on pay of Rs. 6,500/- although his pension has to be fixed on the basis of last pay drawn i.e. Rs. 8,500/-, however, authorities did not take any steps for redressal of his grievances and he filed a writ petition before this Court which was allowed by the learned Single Judge.

Appellant/State of Bihar took a plea in the counter affidavit that although respondent retired from the post of Subedar on 1.11.1999 he has been provided pensionary benefits to the post of constable on the ground that any government servant shall not be entitled to monetary benefit without passing of Hindi Noting and Drafting Examination in view of letter of finance department dated 03.06.2003 and even government employee is promoted on a higher post, he cannot be granted higher pay scale in absence of passing of Hindi Noting and Drafting Examination.

Plea of appellant/State of Bihar did not find favour with the learned Single Judge and he allowed the writ petition with a

direction to the Pension sanctioning authority to fix pension of the petitioner/respondent on the basis of last pay drawn, aggrieved by which, present LPA has been preferred by State of Bihar.

In the LPA, appellant / State of Bihar has taken a different plea that in view of Bihar Government Servant (Hindi Examination) Rule, 1968 every government servant (other than 4th grade) shall have to pass Hindi reading and writing examination within one year from the date of his appointment if he has not passed matriculation examination with Hindi. According to Rule 7 of Bihar Government Servant (Hindi Examination) Rule, 1968, a government servant who has to pass in Hindi reading and writing examination shall not be given increment or confirmation or allowed to cross the efficiency bar unless, he has passed the required Hindi examination and a resolution to such effect was issued by Finance Department, Government of Bihar vide memo dated 3.6.2003 and Home (Police) Department, Government of Bihar also issued similar type of direction vide order dated 23.7.2005 (Annexure C of counter affidavit). From reading of Annexure C, it appears that same was issued after consultation with official language department pursuant to letter no.1226 dated 22.12.2004 issued

by Home (Police) Department in which, it was held that Hawaldar promoted from constable cadre who are not matriculate and after being promoted in Class III have to pass the Hindi reading and writing examination. The learned Single Judge has rightly held that this circular was issued by the Home (Police) department dated 23.7.2005 and which has been issued on the basis of letter dated 22.12.2004 after consultation with official language department, as such, same is not applicable in case of respondent/employee who retired in the year 1999 from the post of Subedar and his pension has to be fixed on the basis of last drawn salary.

In present case even according to Government Circular as contained in Annexure A and B of counter affidavit filed by the State in the writ petition. Respondent/employee was not required to pass Hindi Noting and Drafting Examination, however, in present L.P.A., appellant State of Bihar has taken a different stand that respondent/employee had not passed in hindi reading and writing examination, however, nowhere it is stated that he was granted opportunity to appear in the Hindi reading and writing examination and he did not appear and he was promoted from the post of Constable to Hawaldar/Jamadar and thereafter Subedar and retired in the year 1999. It has also

nowhere stated that respondent/employee was made aware that promotion granted to him is provisional and he has to pass hindi reading and writing examination for confirmation of his promotion. Moreover, there was no circular of the Home (Police) Department with respect to passing of hindi reading and writing examination by police personnels for promotion/increment and same was issued for the first time in the year 2005.

This Court does not find any error or infirmity in the order passed by the learned Single Judge requiring any interference by this Court.

The LPA is, accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2021
Transmission Date	NA