

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1592 of 2018

In
Civil Writ Jurisdiction Case No.7690 of 2011

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1. Rajdeo Singh, Son of Late Ramprit Singh, Resident of Village- Karhari Mathia, P.O- Kinzer, P.S- Kinzer, Distt. Jehanabad.
 2. Balmiki Sharma Son of Late Chandeshwari Sharma Resident of Village - Jarkha, P.S.- Sigori, Distt. Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Commissioner cum Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
3. The Engineer-in-Chief (South) Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
4. The Chief Engineer, Central Design Office, Water Resources Department, Government of Bihar, New Sinchai Bhawan, Patna.
5. The Executive Engineer, Nahar Designation Pramandal No. 2, Water Resources Department, Government of Bihar, Patna.
6. The Secretary to the Government, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
7. The Under Secretary to the Government, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Manoj Kumar, Advocate.
For the Respondent/s : Mr.Anjani Kumar, AAG-4.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 29-11-2022

In the present Letters Patent Appeal, appellants have assailed the order of learned Single Judge dated 12.12.2017 passed in C.W.J.C. No. 7690 of 2011.

2. Brief facts of the case are as follows: Both the appellant nos. 1 and 2 were initially appointed as Chaukidar on



work charge basis in the year 1975 and 1974 respectively. Their services were regularized in the year 1984. Pursuant to the regularization, their names have been incorporated in the respective gradation list of Class-IV employees. Class-III post is governed by Circular dated 11.02.1985. 25% of the Class-III post are earmarked for promotion from Class-IV. Both the appellants applied for the post of Correspondence Clerk and Accounts Clerk. Appellant nos.1 and 2 were promoted on 18.01.1988 to the post of Correspondence Clerk and Accounts Clerk respectively.

3. After five years, official respondent noticed that promotion of appellant nos.1 and 2 to the post of Correspondence Clerk and Accounts Clerk was contrary to the Circular dated 11.02.1985 to the extent that such a those Class-IV employees who are eligible to be promoted to the post of Class-III, were required to pass certain competitive examination conducted by the Department. Both the appellants have not faced competitive examination and passed, therefore, their promotion were held to be irregular, in the result, they were reverted on 07.01.1993.

4. Feeling aggrieved and dissatisfied with the order of reversion dated 07.01.1993, they preferred CWJC No. 783 of



1993 and it was allowed on 13.01.1998 with direction that they are entitled to continue to hold the post of Clerk Class-III post till competitive examination is conducted and in such examination if they pass they would be continued. Once again reversion order has been passed on 20.05.1998 with retrospective effect and it was also subject matter of C.W.J.C. No. 5451 of 1993 and it was allowed on 22.09.2005. Once again they were reverted on 16.09.1999 and it was subject matter of C.W.J.C. No. 10553 of 1999 and it was disposed on 12.08.2009 with the following observation:

“In that view of the matter, all that now remains with the petitioners to demonstrate as to how they could be covered by any of the yard stick laid down by the government as also clarified and upheld by this Court.

Consequently, this writ application is disposed of with a liberty to the petitioners to approach the competent authority and in the event such individual representation is filed by the petitioners, the competent authority will consider case of the petitioners in the light of the earlier judgment of this Court as also government circular dated 11.2.1985 and take a final decision within a period of six months from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions this writ application is finally disposed of.”

5. Further, on 20.01.2011, impugned order has been passed and it was a subject matter of C.W.J.C. No. 7690 of 2011



in which appellants suffered order on 12.12.2017, hence the present Letters Patent Appeal.

6. Learned counsel for the appellants submitted that in terms of Circular dated 11.02.1985, Department did not conduct competitive examination for the purpose of promotion to Class-III post from Class-IV post, despite the observation made in C.W.J.C. No. 783 of 1993 decided on 13.01.1998. It is submitted that even as on the date of retirement of the appellants on 30.06.2007 and 31.07.2009, the examinations were not conducted and it is beyond their control to satisfy their participation in the competitive examination and passing the same.

7. In the light of these facts and circumstances, the respondents insisting that appellants have not passed requisite examination and they are not entitled to hold the promotional post is not correct.

8. Per contra, learned counsel for the respondent resisted the aforesaid contention and vehemently contended that in C.W.J.C. No. 10553 of 1999, this Court has not interfered with the reversion order and it has only made an observation that the petitioners may approach the competent authority and in the event such individual representation is filed by the



petitioners, the competent authority will consider case of the petitioners in the light of the earlier judgment of this Court as also government circular dated 11.2.1985 and take a final decision within a period of six months from the date of receipt/production of a copy of the order. Therefore, order of reversion has not been interfered by this Court while deciding C.W.J.C. No. 10553 of 1999 on 12.08.2009. Hence no interference is called for in so far as the order of the learned Single Judge dated 12.12.2017 passed in C.W.J.C. No. 7690 of 2011 is concerned.

9. Heard learned counsel for the respective parties.

10. Facts are not disputed. Core question for consideration in the present *lis* is that for the purpose of promotion to Class-III from the Class-IV post under 25% quota whether competitive examination is required to be held and such of those persons who have passed competitive examination are eligible for promotion to the post of Class-III.

11. Perusal of the records, it is evident that competitive examination for filling up of 25% quota of Class-III post pursuant to Circular dated 11.02.1985 has not been undertaken by the Department during the period from 13.01.1998 to even this day. Therefore, acquisition of



qualification in terms of Circular dated 11.02.1985 by the appellants is beyond their control. In other words, impracticable to acquire the requisite qualification stated in the Circular dated 11.02.1985. In fact, in C.W.J.C. No. 783 of 1993 decided on 13.01.1998, specific observation has been made by this Court to the extent that appellants are entitled to continue to hold Class-III post till conducting of competitive examination and passing in examination. The same was observed in the latter decision on 12.08.2009 passed in C.W.J.C. No. 10553 of 1999. Despite observations made by this Court on two occasions in the year 1998 and in the year 2009, the respondents have not conducted competitive examination for the purpose of promotion to the Class-III post under 25% quota with reference to Circular dated 11.02.1985. Further, it is to be noted that on the date of deciding C.W.J.C. No. 10553 of 1999 dated 12.08.2009, both the appellants have already attained the age of superannuation and retired from service on 30.06.2007 and 31.07.2009 respectively.

12. In view of these facts and circumstances and the fact that even to this day, the respondent-Department have not conducted competitive examination for the purpose of promotion to Class-III post in terms of Circular dated 11.02.1985, it is high time to ask the appellants to undergo



competitive examination and pass and that too when the master and servant relationship ceases as and when both the appellants have attained age of superannuation and retired from service way back on 30.06.2007 and 31.07.2009. These material information have not been taken note of by learned Single Judge while passing order on 12.12.2017.

13. In the light of these facts and circumstances, the appellants have made out prima facie a case due to default on the part of the Department in not undertaking competitive examination for the purpose of promotion to Class-III post in terms of the Circular dated 11.02.1985.

14. Accordingly, order dated 20.01.2011 which was the subject matter of C.W.J.C. No. 7690 of 2011 stands set aside and order of the learned Single Judge dated 12.12.2017 passed in C.W.J.C. No. 7690 of 2011 stands set aside. L.P.A. is allowed.

15. The concerned respondent is hereby directed to re-fix the pay of the appellants in the cadre of Class-III post with reference to their promotion order dated 18.01.1988 and pay the difference of amount and further re-fix their pension with reference to the post of Class-III and pay difference of pension amount. The aforesaid calculation shall be undertaken



and disburse arrears of pay and pension within a period of four months from the date of receipt of this order failing which the appellants are entitled to interest on all arrears amount at the rate of 8% per annum.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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