

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.725 of 2021
In
Civil Writ Jurisdiction Case No.20755 of 2018

-
1. Laxman Ram Son of Late Ram Briksh Ram Resident of Village and P.O.- Dhurlakh, P.S.- Samastipur Muffasil, District- Samastipur.
 2. Baijnath Das, Son of Late Karley Mistry Resident of Laxmi Chown Police Line Road, SBI ATM Gali, Near Urban Primary Health Centre, Brahmpura, P.S.- Brahmpura, District- Muzaffarpur.
 3. Kant Lal Paswan, Son of Late Jhagru Paswan Resident of Basant Vihar Colony, Dighi Kala Paschim, P.S.- Sadar, Hazipur, District- Vaishali at Hazipur.
 4. Sikandar Ram, Son of Late Yadu Ram Resident of Amrud Bagan, Jail Chowk, Chandwara, P.S.- Town Muzaffarpur, District- Muzaffarpur.
 5. Ranjan Prasad, Son of Late Bishnu Prasad Resident of Mali Ghat, Near Dr. Shiv Shankar Prasad Singh, Police Line Road, P.O.- Ramna, P.S.- Mithanpura, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman.
2. The Chairman, Bihar State Power Holding Company Ltd., Patna.
3. The Deputy General Manager (Personnel), Bihar State Power Holding Company Ltd., Patna.
4. The North Bihar Power Distribution Company Ltd. Patna through its Managing Director.
5. The Managing Director, The North Bihar Power Distribution Company Ltd., Patna.
6. The South Bihar Power Distribution Company Ltd., Patna through its Managing Director.
7. The Managing Director, The South Bihar Power Distribution Company Ltd., Patna.
8. The Bihar State Power Generation Company Ltd., Patna through its Managing Director.
9. The Managing Director, The Bihar State Power Generation Company Ltd., Patna.
10. Smt. Sheela Devi Wife of Late Satya Narain Ram Resident of Village- Dhepura, P.O.- Pandaul, P.S.- Sakri, District- Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Venkatesh Kirti, Advocate
		Mr. Akhileshwar Singh, Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 22-07-2024

The appellants are aggrieved with the judgment of the learned Single Judge which denied them the claim of officiating allowances in the promotion post of Accounts Officer, in which promotion post the appellants, who were Accountants, were continuing temporarily on a charge basis from 2006 till their retirement.

2. The learned Single Judge found that Rule 103 of the Bihar Service Code (for brevity, the Code) specifically provided for the higher pay in the post held as a temporarily measure, only if he is entitled to hold the post substantively. The appellants were all persons who did not have the eligibility to be promoted to the post of Accounts Officer; which is admitted.

3. The learned Counsel for the appellants relied on a number of decisions as relied on before the learned Single Judge. Rule 103 of the Code was first considered by a learned Single Judge in **Dr. Sachita Kumar Sinha v. The State of Bihar & Ors.; 1995 (1) PLJR 362**; then by a Division Bench in **Prafulla Ranjan Shrivastava v. The State of Bihar & Ors.; 2008 (3) PLJR 144**; followed by a learned Single Judge in **Ganesh Lal v. The Chairman, Bihar State Power Holding**



Company Ltd. & Ors.; 2016 (2) PLJR 370, approved by a Division Bench in **The Chairman, Bihar State Power Holding Company Ltd. & Ors. v. Ganesh Lal; 2017 (4) PLJR 282**. The learned Counsel for the petitioner would further urge that Ganesh Lal stood identical to the petitioners; being not eligible to occupy the promotion post for reason of having not passed the '*Lekha Pravin*' Examination, which was essential to enable promotion. The SLP filed against the Division Bench judgment in **Ganesh Lal** (supra) was dismissed as evident from Annexure-4 (in the writ petition) order of the Hon'ble Supreme Court.

4. The learned Government Advocate on the other hand, pointed out that the Hon'ble Supreme Court had left the question of law open, and in the case of the appellants herein, they are mere fence-sitters who approached this Court long after their retirement, hoping to get the same benefits as were given to Ganesh Lal in the cited decision.

5. We have seen the various judgments placed before us. **Dr. Sachita Kumar Sinha** (supra) was posted as a Deputy Director of Education when he was appointed as Additional Director of Secondary Education for about two years. Again, he was asked to discharge the duties of the Director (Secondary Education) in addition to his own work of Additional Director. He claimed the higher pay applicable to the post of Additional



Director and Director. The contention of the Government was that the petitioner was never promoted to the post, and he had agreed to work on the scale of pay of the Deputy Director in the higher post. The learned Single Judge relied on the judgment of the Hon'ble Supreme Court, which emphasized the requirement of the State, being a welfare State, to act as a model employer, in which circumstance, it was held the denial of payment of a higher salary to the post in which an employee worked as an in-charge cannot be justified. **Prafulla Ranjan Shrivastava** (supra) relied on the aforesaid decision and therein; the petitioner, being the senior-most Town Planner, was given the additional charge of the Chief Town Planner, which was found to have entitled him to higher pay. The eligibility to be substantively appointed to the higher post, was never in question, in the cited decisions.

6. Now we come to **Ganesh Lal** (supra), in which the learned Counsel for the petitioner specifically pointed to paragraph no. 6, wherein the petitioner therein, as contended by the State, was not entitled to the promotion post because of his having not obtained the essential qualification. However, we notice from paragraph no. 3 that Ganesh Lal had retired on 31.01.2014 and he had approached the Court by **C.W.J.C. No. 3687 of 2013**; when he was in employment.

7. Be that as it may, the Special Leave Petition from



the Division Bench judgment in **Ganesh Lal** (supra) was dismissed; but as evident from Annexure-4, the question of law was kept open. Hence there is no merger of the decision of the High Court with that of the Hon'ble Supreme Court; and while inter-parties the decision was upheld, the question of law was kept open. Even the Division Bench judgment hence loses the sheen of a binding precedent.

8. We also notice the judgment of the Hon'ble Supreme Court referred to in the decision of the Division Bench in **Ganesh Lal** (supra), namely **Arnidam Chattopadhyay & Ors. v. State of West Bengal.; (2013)4SCC152**. Therein, the employees who were holding the higher post were found to be entitled to the salary and allowances of the higher post only since, by default of the respondent employer, the employees were not promoted in accordance with the Rules. Having not promoted them in accordance with the Rules, the said fact was relied on by the employer as a pretext to deny them the higher salary and allowances in the promotion post, which they held on, an in-charge basis. Here too the eligibility to hold the post substantively was not in question.

9. We agree with the reasoning of the learned Single Judge, which was insofar as the entitlement under Section 103 of the Code being available only to a person who held the higher post, substantively as a temporary measure. The petitioners were



not entitled to hold the post substantively since they did not have the essential required qualification for promotion. There can be no fault attributed to the employer of not having carried out the promotions in time and continued the petitioners on an in-charge basis. If promotions were carried or selection for the same was conducted, the petitioners would not have been entitled.

10. We reiterate the observation of the Hon'ble Supreme Court in Annexure-4 that the question of law was left open, and in that circumstance, we find favour with the interpretation, of Rule 103 of the Code, by the learned Single Judge.

11. We also observe that the appellants are those who retired long back, the first appellant on 31.01.2014, the second appellant on 31.01.2016, the third appellant on 30.09.2013, the fourth appellant on 31.03.2015 and the fifth appellant on 31.01.2014.

12. It is long after their retirement they approached this Court in the year 2018 with the above writ petition. Obviously, by reason of a judgment of the Division Bench of this Court in **Ganesh Lal** (supra) delivered on 19.07.2017. The appellants, as argued by the learned Government Advocate, were fence-sitters, and they cannot claim the benefit of the judgment passed in a case of another employee, even if



similarly situated; who had alerted within time and while in service approached this Court with a grievance. The writ petitioners hence are not entitled to claim the dues of officiating allowance prior to their retirement, long after retirement.

13. On the correct interpretation of Rule 103 of the Code and also on the ground of delay, the writ petition is liable to be dismissed, which was done by the learned Single judge.

14. We find absolutely no reason to interfere with the impugned judgment. The appeal stands rejected, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.07.2024.
Transmission Date	

