

**(2023) 03 PAT CK 0075****Patna High Court**

**Case No:** Letters Patent Appeal No. 856 Of 2019 In Civil Writ Jurisdiction Case No. 8499 Of 2011

Mahanth Manjhi

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision:** March 28, 2023

**Hon'ble Judges:** Ashutosh Kumar, J; Harish Kumar, J

**Bench:** Division Bench

**Advocate:** Mahanth Manjhi, Sushil Kumar Singh, Anjani Kumar, Shaileendra Kumar Singh, Utkarsh Bhushan

**Final Decision:** Dismissed

**Judgement**

Heard Mr. Mahanth Manjhi (in person) and Mr. Anjani Kumar, learned senior Advocate for BSFC.

The appellant was appointed as an Assistant Accounts Officer pursuant to an Advertisement No. 270 of 1977, wherein the qualification prescribed was Graduation in Commerce with at least three years experience in a responsible position in a Government organization, Public Sector Undertaking or a commercial firm of repute and the candidate to be conversant with the commercial system of accounts and capable of maintenance of books of accounts, operation of Cash Credit Accounts, Maintenance of Stock Book of Commodities, Drawing up Trial Balance, Preparation of Trading Profit and Loss Accounts and Balance Sheet independently.

The appellant and 14 others were appointed against the said advertisement as noted before.

The appellant later was provisionally promoted to the post of Accounts Officer on a higher pay scale in contemplation of necessary approval from the Department. The appellant therefore continued to work as Accounts Officer and his nature of work remained the same, which would have otherwise been of an Accounts Officer, had he been promoted or would have been independently appointed.

However, for the paucity of any approval from the Finance Department forth coming, the order of provisional promotion was stayed.

Thereafter, the appellant superannuated.

However, the litigation continued and the appellant preferred a writ petition before this Court vide CWJC No. 16381 of 2010, which was disposed of on 29.09.2010 with a direction to the authorities of the Finance Department to consider the case of the appellant for grant of approval to the promotion on the post of Accounts Officer in the light of the contents of the Office Order dated 23.11.2000, referred to above, as early as

possible, preferably within a period of two months from the date of receipt/production of a copy of that order before the authorities of the Finance Department.

Pursuant to the afore-noted direction, the matter was placed before the Principal Secretary, Finance Department, who, after hearing the stakeholders including the appellant found that no doubt vide letter dated 31.01.2008 contained in Memo No. 1026, the BSFC had taken a decision of provisionally promoting the appellant on the post of Accounts Officer but the essential qualification for an Account Officer is either Chartered Accountant or Cost Accountant but the appellant only had the qualification of B.Com.

At the time of creation of the post, it was decided that the post of the Accounts Officer would be in the pay scale of Rs. 1350-2000/- for which selection process shall be conducted independently. In case, all the ten posts created are not filled through direct process of recruitment, the post of Accounts Officer would be downgraded in the pay scale of Rs. 1000-1020/- and would be filled up by any other process.

Mr. Manjhi has asserted that he was though provisionally promoted to the post of Accounts Officer from the feeder post of Assistant Accounts Officers but it was a downgraded post with specific pay slab.

Thus, the objection of the Finance Department that the appellant did not have the requisite qualification for being appointed as an Accounts Officer in the absence of any Cost Accountancy or Chartered Accountancy degree is incorrect and has been raised only for the purposes of defeating the rightful claim of his when all the work of an Accounts Officer have been taken from him and he has successfully discharged such functions for several number of years.

The afore-noted contention of Mr. Manjhi has been controverted on behalf of the BSFC. It has been urged that no doubt the work of Accounts Officer was taken from the appellant, but it was not a post which was downgraded and the appellant was made to assume such office.

The process of filling up of Accounts Officer was never conducted for reasons which have not been explained in the series of counter affidavits in the writ petition as also in this appeal but a categorical statement has been made that the post was never downgraded and that the provisional order of promotion did not see the light of the day for the reason of the objection of the Finance Department.

Precisely for this reason, the learned Single Judge has rejected the claim of the appellant.

However, the base-line in the order passed by the learned Single Judge is the opinion given by the Principal Secretary, Department of Finance, who by taking reference to the requisite qualification has opined that since there was no promotional post of Accounts Officer, therefore is no feeder cadre. Merely because the appellant officiated as an Accounts Officer and discharged all the functions of the Accounts Officer, he could not be placed in the category of Accounts Officer with a downgraded scale.

It is really unfortunate that the post of Accounts Officer was never filled up nor any process was ever initiated.

At the time of creation of the post, it was clearly stipulated that if such posts are not filled up by direct process of recruitment, the post could be downgraded and could be filled up by any other process.

The complete apathy of the Government organization is writ large. The technical objection may be affirmed by Courts of Law, but it does behove of a model employer that when a person is made to work on a post with the anticipation that such posts shall be approved and the incumbent would be the beneficiary of a higher pay-scale.

However, considering the fact that this objection of the Finance Department regarding the post of Accounts Officer never having been filled up or downgraded, the claim of the appellant cannot be entertained.

The appeal, therefore, is dismissed.