

**(2008) 04 PAT CK 0065**

**Patna High Court**

**Case No:** LPA No. 122 of 2005

The High Court of Judicature at  
Patna and Others

APPELLANT

Vs

Ram Kripal Prasad

RESPONDENT

---

**Date of Decision:** April 22, 2008

**Citation:** (2008) 3 PLJR 361

**Hon'ble Judges:** C.M. Prasad, J; Barin Ghosh, J

**Bench:** Division Bench

**Advocate:** Lalit Kishore, for the Appellant; Rajiv Kr. Verma, Ashok Kr. Sinha, Vindychal Singh and Ashok Kr. Verma, for the Respondent

---

### **Judgement**

Barin Ghosh & C.M. Prasad, JJ.

In 1973, the sole respondent was appointed as an Ex-Cadre Assistant on the condition that he would be required to sit and pass the examination to be conducted in future for appointment of Assistants. This appointment was granted to the respondent considering the death of his father, an employee of the High Court, who died-inharness. Although, admittedly at the time when this appointment was given, a compassionate appointment to a member of the family of a deceased High Court employee, who has died-in-harness, was not available. The respondent failed to succeed in the examination for appointment of Assistants although he sat in at least one of the examinations held for that purpose. On the same terms and conditions, the respondent worked until July, 1981, when waiving the term that he would be required to sit and succeed in an examination to be held for recruitment of Assistants, the services of the respondent was regularized considering his past five years services. Respondent was regularized as an Ex-Cadre Assistant. He was not regularized as an Assistant. Ex-Cadre Assistants are entitle to a lesser pay scale than Assistants. In 1986, respondent was appointed as an Assistant. In the writ petition, respondent contended that he should be treated to be an Assistant since 1973 or since 1976 or since 1978. The Court rejected such claim. By the Judgment appealed

against, Court held that the respondent should be entitled to seniority as an Assistant with effect from July, 1981 and treating the respondent as such his case for further promotion should be considered. In the present appeal, appellant contends that in July, 1981 respondent was regularized as an Ex-Cadre Assistant and not as an Assistant, he became an Assistant only in 1986 and accordingly, seniority of the respondent as an Assistant cannot be taken note of from July, 1981.

2. The fact remains that in July, 1981 respondent, on being regularized as an Ex-Cadre Assistant, became a Government employee. In such view of the matter, immediately before he was made an Assistant, he was a Government employee and accordingly, could not be appointed afresh for it is no body's case that before such appointment respondent resigned. In such view of the matter, one is required to ascertain whether appointment of the respondent in 1986 as Assistant was a promotion or a transfer. If it was a promotion then of course the respondent was entitled to count his seniority as Assistant from the date of his promotion and not from a date prior thereto. The order by which respondent was appointed or made an Assistant states, amongst others, that the respondent shall not be entitled to fixation of pay as admissible to promoted employees. That clearly denotes that the respondent was not promoted, but was transferred from Ex-Cadre to Cadre.

3. It is well settled in law that a person working in Ex-Cadre, while transferred to the Cadre, carries with him experience he has earned in the Ex-Cadre post.

4. Accordingly, we see no infirmity in the order except that the learned Judge by mistake did not take note of the fact that the regularization of the respondent in July, 1981 was in the post Ex-Cadre Assistant. With the observations, as above, the appeal is disposed of without any order as to costs.