REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9220 OF 2019
(ARISING OUT OF SLP(CIVIL) NO. 7505 OF 2018)

RANA PRATAP SINGH … APPELLANT(S)

VERSUS

VITTIYA EVAM LEKHA ADHIKARI, DISTRICT BASIC EDUCATION OFFICER AND ORS. … RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

1. This appeal has been filed against the Division Bench judgment of Allahabad High Court dated 06.02.2018 in Special Appeal No.432 of 2012 by which judgment the Special Appeal filed by the appellant questioning the judgment of learned

Single Judge dated 02.02.2012 in writ petition No.15408 of 1993 has been dismissed.

2. Brief facts of the case necessary to be noted for deciding this appeal are: -

One Shiv Kumar Rai was working as Junior Accounts Clerk in the office of Finance and Accounts Officer, Office of District Basic Education Officer, respondent No.1. Shri Shiv Kumar Rai was promoted as Assistant Accountant giving rise to a vacancy in the post of Junior Accounts Clerk. The respondent No.1 called for names from the Employment Exchange, Azamgarh. The Employment Exchange forwarded the list of twelve candidates to the respondent No.1. The Selection Committee was constituted in accordance with the Statutory Rules namely The Subordinate Offices Ministerial Staff(Direct Recruitment) Rules, 1985, to hold the

selection on the vacant post of Junior Accounts Clerk. The name of petitioner was also included in the list of twelve candidates forwarded by Employment Exchange, Azamgarh. The Selection Committee interviewed the candidates on 16.08.1989 but the said selection was cancelled by the respondent No.1 and fresh process was initiated for holding selection. An advertisement was published by District Basic Education Officer, Azamgarh in Daily News Paper “Dainik Devvrat” dated 05.12.1990 calling for application from candidates for a vacant post of Junior Accounts Clerk. Candidates were called to appear for interview on 20.12.1990. By letter dated 07.12.1990, the respondent No.1 wrote to District Employment Officer, Azamgarh requesting the Employment Officer to intimate at his level the twelve candidates whose names

were forwarded for the vacant post of Junior Accounts Clerk to appear for interview on 20.12.1990. Letter also mentioned that the twelve candidates who were forwarded by Employment Exchange have also been intimated by respondent No.1 to present themselves before Selection Committee on 20.12.1990. On 20.12.1990, petitioner along with other candidates appeared before the Selection Committee. The petitioner was selected by the Selection Committee and recommended for appointment on the post of Junior Accounts Clerk. Respondent No.1 issued an appointment Order dated 21.12.1990 to the petitioner appointing him on the post of Junior Accounts Clerk. Order futher mentioned that the appointment is temporary. In pursuance of appointment Order dated 21.12.1990, petitioner joined on 22.12.1990. By Order dated

11.11.1992, the promotion of Shiv Kumar Rai as Assistant Accountant was cancelled by respondent No.1. On same day, consequential letter dated 11.11.1992 was also issued terminating the appointment of the petitioner due to Shiv Kumar Rai having been reverted to his Original post of Junior Accounts Clerk. Shiv Kumar Rai filed a W.P.No.44384 of 1992 challenging order dated 11.11.1992. Learned Single Judge of the High Court vide order dated 27.11.1992 stayed the Order dated 11.11.1992 for a period of three months. The petitioner also filed a writ petition challenging the order dated 11.11.1992. Petitioner being not aware of the order dated 27.11.1992 could not point out to the High Court about the stay of the Order of reversion passed of Shiv Kumar Rai. Hence, his writ petition was dismissed by the High Court on

04.12.1992. While dismissing the writ petition, High Court also observed that petitioner's claim may be considered on the post of Junior Accounts Clerk which fell due to promotion of Ram Sinhasan at whose instance the promotion of Shiv Kumar Rai was cancelled. Respondent No.1 issued order dated 01.01.1993, consequent to passing of interim order of the High Court staying the reversion order dated 11.11.1992 of Shiv Kumar Rai re-appointing the petitioner on the post of Junior Accounts Clerk till 27.02.1993. The interim order passed in writ petition No.44384 of 1992 of Shiv Kumar Rai was continued by order dated 09.04.1993 which directed:

> "The interim order dated 27.11.1992 is continued and the petitioner will be paid salary regularly."

3. An order dated 27.02.1993 was issued by respondent No.1 informing that since petitioner's re-appointment was on the post of Junior Accounts Clerk was upto 27.02.1993, hence he should hand over his charge in the afternoon of 27.02.1993 to one Shri Mohd. Vasama Ansari.

4. Writ Petition No.15408 of 1993 was filed by the Petitioner challenging the letter dated 27.02.1993 which letter was stayed by the High Court on 29.04.1993 by passing following order:-

> "Until further order the operation of the impugned order dated 27.02.1993 shall remain stayed."

5. The re-appointment of petitioner was continued by the letter dated 18.05.1993. Shiv Kumar Rai by virtue of the interim order passed in his writ petition continued to work as Assistant Accountant till he attained the age of Super-Annuation on

29.02.2008. W.P.No.44384 of 1992 filed by Shiv Kumar Rai became infructuous due to efflux of time and was dismissed on 15.09.2001. The order dated 15.09.2001 dismissing the writ petition of Shiv Kumar Rai is as follows:-

> "15.09.2001
>
> Hon'ble R.P.Misra,J.
>
> This writ petition has been listed in the group of such cases, which may have become infructuous due to efflux of time. No one turns up to press it either.
>
> The writ petition is, accordingly, dismissed but without cost.
>
> Sd/-"

6. Shiv Kumar Rai having been promoted as Assistant Accountant, he never returned to his original post till superannuation. The petitioner continued to work on the post of Junior Accounts

Clerk. The petitioner was given first promotional increment in the service after completion of fourteen years on 22.12.2004. Second promotional upgradation was given after completion of eighteen years of service on 22.12.2008 and order dated 13.01.2011 was issued by respondent No.1 in the above regard. On 02.02.2012, the writ petition of petitioner being W.P.No.15408 of 1993 was dismissed.

7. Learned Counsel for the appellant submits that learned Single Judge while dismissing the writ petition on 02.02.2012 has made observation that appointment of the appellant was made without following the procedure known to law which observation was neither correct nor was based on material on record. Learned counsel for the appellant submits that his appointment was made by duly constituted Selection Committee as per 1985

Rules and after calling names from the Employment Exchange, Azamgarh, who forwarded twelve names, which included name of the appellant. There was no challenge to the appointment of the appellant at any point of time nor appointment was questioned by anyone.

8. The writ petition was filed challenging the consequential order dated 11.11.1992 which was issued in consequence of cancelling the promotion of Shiv Kumar Rai on the post of Assistant Accountant by which he was reverted on the post of Junior Accounts Clerk on which appellant was appointed. The issue in the writ petition was entirely different and was only with regard to correctness of the Order dated 11.11.1992.

9. Learned counsel further submits that learned Single Judge erred in observing that on dismissal

of first writ petition of the appellant on 04.12.1992, his removal became final and subsequent appointment did not survive for consideration before the Court.

10. It is submitted that the writ petition dismissed on 04.12.1992 was against the order dated 11.11.1992 which was a consequential order and the main order dated 11.11.1992 passed with respect to Shiv Kumar Rai having been stayed by the High Court on 27.11.1992, the consequential order with regard to appellant had no meaning, hence, the dismissal of the said writ petition on 04.12.1992 shall not prejudice the claim of the appellant.

11. It is further submitted that observation of learned Single Judge that subsequent appointment of the appellant dated 01.01.1993 being limited

till 27.03.1993, thereafter appellant cannot continue is also erroneous. The Order dated 01.01.1993 although mentioned re-appointment but in essence the order was only of reinstatement of the appellant on the post in pursuance of his earlier appointment dated 21.12.1992. There being no fresh process of appointment, there was no question of any re-appointment. The learned Single Judge also has not correctly understood the import of the Order dated 01.01.1993.

12. The Division Bench based its judgment only on the ground that writ petition filed by Shiv Kumar Rai against the order dated 11.11.1993 having been dismissed on 15.09.2001, his reversion shall attain finality, Consequently there will be no vacancy on the post of Junior Accounts Clerk, hence, the appellant shall have no right to continue on his post. The Division Bench did not

consider the fact that Writ petition filed by Shiv Kumar Rai was dismissed as infructuous by efflux of time and the dismissal of writ petition was not on merits. It is a fact that Shiv Kumar Rai continued to work on his post of Assistant Accountant and retired on 29.02.2008 by holding the said promotional post. Shiv Kumar Rai never came back on his post of Junior Accounts Clerk, hence, appellant's continuance on post of Junior Accounts Clerk cannot be taken away by dismissal of writ petition of Shiv Kumar Rai.

13. Learned counsel for the appellant submitted that appellant has been in service for twenty seven years. In the meantime, he received promotional Pay Scale of Assistant Accountant, Selection Grade. On the day when writ petition was dismissed by learned Single Judge, he was working in the grade of Assistant Accountant. The

appellant was also confirmed on his post of Junior Accountant w.e.f. 22.12.1993 and Assistant Accountant w.e.f. 22.12.2007 by order dated 01.08.2012. All these facts were brought on record by means of rejoinder affidavit filed in Special Appeal which had not been taken into consideration by Division Bench.

14. It is further submitted that in the year 2013 and thereafter complaints were filed against the appellant which were duly enquired by and reports were submitted to Collector on 27.04.2017 that complaints were without any basis. Further, on another complaint, report was submitted by Finance and Accounts Officer, Primary Education, Azamgarh dated 02.02.2017 that appointment of the appellant was made after following due procedure of the law and the appellant's continuance on his post was valid and in accordance with law.

15. Against the judgment of learned Single Judge dated 02.02.2012 and Special Appeal No.432 of 2012 was filed by the petitioner. By an order dated 01.08.2012, the petitioner's services were confirmed on the post of Junior Accounts Clerk w.e.f. 22.12.1993 and on the post of Assistant Accountant w.e.f. 22.12.2007. The Special Appeal filed by the petitioner was dismissed by Division Bench on 06.02.2018, aggrieved against which judgment this appeal has been filed.

16. Learned counsel for the respondents refuting the submission of the learned counsel for the petitioner contends that the petitioner's appointment was made against the procedure prescribed by law. No advertisement was issued on 05.12.1990 in the Daily News Paper 'Dainik Devvrat' as claimed by the petitioner. The writ

petition was dismissed on 02.02.2012 and there being no interim order in the special Appeal, how he continued and received salary after 02.02.2012, is not explained. The petitioner concealed his dismissal of writ petition from the Department and is not entitled for any relief from this Court. There has been several complaints received against the petitioner with regard to which enquiries were held and the respondent No.1 had taken action against the petitioner.

17. We have considered the submissions of learned counsel for the parties and perused the record.

18. From submissions of learned counsel for the parties and materials on record, following points arise for consideration in this appeal:-

I) Whether appointment of appellant on the post of Junior Accounts Clerk on 21.12.1990 was not validly made in accordance with law?

II) Whether by dismissal of Writ Petition No.Nil of 1992 on 04.12.1992 filed against the consequential order dated 11.11.1992 issued to the petitioner, appellant's right to continue on his post shall come to an end?

III) Whether re-appointment of the appellant dated 01.01.1993 been limited only till 27.02.1993 after efflux of the said period appellant's right to continue on the post shall come to an end?

IV) Whether by dismissal of W.P.No.44384 of 1992 - Shiv Kumar Rai versus Director Basic Education and others on 15.09.2001 shall result in terminating the vacancy on the post of Junior Accounts Clerk on which appellant was appointed and was working?

I) Whether appointment of appellant on the post of Junior Accounts Clerk on 21.12.1990 was not validly made in accordance with law?

19. The copy of the appointment order of the appellant has been placed on record as Annexure-P1, which mentions that appointment of the appellant has been made on he being selected by

Selection Committee constituted as per provisions of “The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985”(hereinafter referred to as “1985 Rules”). The appointment letter contains endorsement to the District Employment Officer. The material has been brought on record that the respondent No.1 has written to District Employment Officer on 07.12.1990 in reference to names of twelve candidates forwarded by the Employment Exchange with respect to the post of Junior Accounts Clerk which clearly indicate that names were sought from Employment Exchange before holding selection. Rules 22 and 23 of 1985 Rules provides for procedure of notification of vacancies to the examination and procedure of selection. Rule 22 is as follows: -

> "**Notification of Vacancies to the Employment Exchange. -**
> The appointing Authority shall determine the number of vacancies to be filled during the course of the year as also the vacancies to

> reserved under Rule 7. The vacancies shall be notified to the Employment Exchange. The Appointing Authority may also invite application directly from the person who have their names registered in the Employment Exchange. For this purpose, the Appointing Authority shall issue an advertisement in a local daily news paper besides pasting a notice for the same on the Notice Board. All such application shall be placed before the Selection Committee."

20. The appellant's case is that apart from calling names from the Employment Exchange, the respondent No.1 had also published an Advertisement on 05.12.1990 in the Daily News Paper 'Dainik Devvrat'. The learned counsel for the respondents has refuted the claim of appellant of publication in the Daily News Paper. He submits that Editor of News Paper vide his letter dated 21.08.2017 with regard to verification of alleged

advertisement has informed that it is not possible to verify the same, it being a very old matter.

21. Learned counsel submits that there was no publication in the newspaper and the claim of publication was only invented for the purpose of this case.

22. Appellant has refuted the above submission of the respondent and submits that newspaper has been filed before the High Court and further in the reports which were submitted with regard to complaints against the appellant, it was specifically mentioned that the publication was made in the News Paper 'Dainik Devvrat' on 05.12.1992.

23. There is no denial on the part of the respondents that the names were called from the

Employment Exchange by the appointing authority before conducting the selection and the Employment Exchange had forwarded the twelve names which also included the name of appellant. The appointment of the appellant having been made by Selection Committee constituted under Statutory Rules after calling the names from Employment Exchange, the appointment cannot be said to have been made in disregard to the Statutory Rules.

24. More so in the present case, there was no challenge to the appointment by any candidate nor any proceedings were initiated by the appointing authority questioning the appointment of the appellant. The first writ petition was filed by the appellant when consequent to reversion of Shiv Kumar Rai on the post of Junior Accounts Clerk on which appellant was working, his services were terminated by order dated 11.11.1992.

25. We, thus, conclude that appointment of the appellant cannot be said to have been made in disregard to the Rules and further, no proceedings were initiated either by any candidate or by appointing authority questioning the appointment of the appellant.

26. Learned Single Judge without taking into consideration the facts of constitution of Selection Committee, calling the names from Employment Exchange has made observations that no procedure known to law namely 'Publication of Notification' etc. was adopted which cannot be approved. Without having full aspect of the matter, no such observation ought to have been made by learned Single Judge more so when the appointment was not questioned either by any candidate or by appointing authority by initiating any process.

II) Whether by dismissal of Writ Petition No.Nil of 1992 on 04.12.1992 filed against the consequential order dated 11.11.1992 issued to the petitioner, appellant's right to continue on his post shall come to an end?

27. Writ Petition No.Nil of 1992 was filed by the appellant challenging the Order dated 11.11.1992. On 11.11.1992, two orders were passed by respondent No.1. By first order dated 11.11.1992 appointment(promotion) of Shiv Kumar Rai was cancelled and he was directed to take charge of his original post of Junior Accounts Clerk. In consequence to above 11.11.1992 order with regard to petitioner, following order was issued:-

" Accounts Officer, Office of
District Basic Education Officer,
Azamgarh

Order Number/Le.No./803-809/1992-93

Date: 11.11.1992

Termination of service

Consequent to reversion of Shri Shiv Kumar Rai, Assistant Accounts,

Lekha Sangathan Office, District Basic Education Officer, Azamgarh at his original post Junior Accounts Clerk, the purely temporary services of Shri Rana Pratap Singh, Junior Accounts Clerk are terminated with immediate effect. He is ordered to hand over the charge of his post to Shri Shiv Kumar Rai with immediate effect.

Sd/- illegible
Accounts Officer
Office of District Basic
Education Officer, Azamgarh

Endorsement Number account/803-809/1992-93"

28. Both Shiv Kumar Rai and petitioner have filed separate writ petitions challenging order dated 11.11.1992. In writ petition No.44384 of 1992 filed by Shiv Kumar Rai, following interim order was passed on 27.11.1992: -

" ..Issue Notice

Learned standing counsel prays for and is granted one month time to file counter affidavit. Petitioner will have thereafter two weeks time

> for filing rejoinder affidavit. List the stay application before the appropriate court in the 2nd week of February, 93.
>
> For a period of three months from today the operation of the order dated 11.11.92 shall remain stayed.
>
> Petitioner is permitted to make the necessary amendment in his petition within three days."

29. Thus on 04.12.1992, when the writ petition of the appellant challenging the order dated 11.11.1992 came for consideration, the Court was not informed that Order dated 11.11.1992 with regard to Shiv Kumar Rai has already been stayed by the High Court. When the Main Order dated 11.11.1992 with regard to Shiv Kumar Rai was stayed, the consequential order issued with regard to petitioner shall automatically become inoperative. The dismissal of writ petition on 04.12.1992 due to above reason shall not adversely

affect the petitioner's right to continue on the basis of his appointment dated 21.12.1990. In view of the interim order passed in writ petition on 27.11.1992, the order impugned in the writ petition of the appellant was not operative, hence, dismissal of writ petition on 04.12.1992 shall not have that adverse effect as has been noted by the learned Single Judge in the impugned judgment dated 02.02.2012.

30. It is due to the above reason that subsequently the appellant was reinstated on the post on 01.01.1993 because vacancy on which he was appointed became available by the interim order obtained by Shiv Kumar Rai on 27.11.1992.

III) Whether re-appointment of the appellant dated 01.01.1993 been limited only till 27.02.1993 after afflux of the said period, appellant's right to continue on the post shall come to an end?

31. On the Interim Order dated 27.11.1992 having been passed in writ petition of Shiv Kumar Rai as stated above, the consequential order issued to the appellant became inoperative and he was entitled to continue on his post of Junior Accounts Clerk by virtue of his appointment dated 21.12.1990. The Order dated 01.01.1993 was issued by the respondent No.1 which is to the following effect: -

> "Accounts Officer, Office of District Basic Education officer, Azamgarh
>
> Order Number/Accounts/ /1992-93
> Date : 01.01.93
>
> Order of re-appointment
>
> Consequent to passing stay order of the operation of Order dated 11.11.1992 passed by the Hon'ble High Court at Allahabad in Writ Petition in Shri Shiv Kumar Rai Versus Director of Education (Basic) Nishatganj and others, Shri Rana Pratap Singh son of Shri Suryanath Singh is re-appointed on temporary basis from the date of taking charge on the vacant post of Junior Accounts

Clerk till 27.02.1993. This appointment can be terminated at any time without any prior information.

Shri Rana Pratap Singh is directed to take charge immediately on receipt of copy of this order.

Accounts Officer
Office of District Basic
Education Officer, Azamgarh.

Endorsement Number Accounts/117-1240/1993-94

Dated : 01.01.1993"

32. Although in the order dated 01.01.1993, the order refers it as an order of re-appointment but in essence the order is not an order of re-appointment but order of reinstatement of appellant on the post which became available for the appellant after interim order passed in writ petition of Shiv Kumar Rai. The appellant was asked to go because of reversion of Shiv Kumar Rai on his original post by Order dated 11.11.1992. When the said order was stayed, the appellant

became entitled to continue on his post and no order of re-appointment was necessary or required. The entitlement of appellant was by virtue of his earlier appointment. The re-appointment order refers to appointment of the appellant till 27.02.1993. The initial appointment of the appellant dated 21.12.1992 which was made after regular selection was not limited to any period. The date of 27.02.1993 which was mentioned in the letter dated 01.01.1993 was only due to the reason that interim order granted to Shiv Kumar Rai on 27.11.1993 was only for a period of three months i.e. only upto the period till 27.02.1993 which date was mentioned in the order dated 01.01.1993. The interim order passed in the writ petition of Shiv Kumar Rai was continued by order dated 09.04.1993, which is to the following effect:-

> " ...The interim order dated 27.11.92 is continued and the petitioner will be paid salary regularly.

Dated/ 09.04.1993”

33. By continuance of interim order in favour of Shiv Kumar Rai automatically the order in favour of the appellant shall continue and there was no question of his appointment being come to an end.

34. Learned Single Judge in the impugned judgment has taken the view that since the appointment of the appellant was only for limited duration till 27.02.1993, he has no right to continue. Learned Single Judge lost sight of the fact that the date 27.02.1993 was mentioned in the letter dated 01.01.1993 because of the fact that interim order of Shiv Kumar Rai was only for the period of three months and when the interim order with regard to Shiv Kumar Rai by the High Court was continued, the appellant also had become entitled to continue.

35. Learned Single Judge, thus, committed error in not correctly appreciating the consequence of order of the High Court dated 04.12.1992 in the first writ petition and nature of the letter dated 01.01.1993.

36. We, thus, are of the view that letter dated 01.01.1993 cannot be said to be re-appointment of the appellant. The order was in essence re-instatement of the appellant in consequence of his earlier appointment dated 21.12.1990. From the materials brought on record ,it is also clear that the Education Authorities has also treated the appointment of appellant continuing from 22.12.1990, which is clear from order of approval of increment dated 30.12.2000, Annexure RA-6 and subsequent order issued by Finance and Accounts Officer where date of appointment of appellant has been mentioned as 21.12.1990.

IV) Whether by dismissal of W.P.No.44384 of 1992 Shiv Kumar Rai Versus Director Basic Education and others on 15.09.2001 shall result in terminating the vacancy on the post of Junior Accounts Clerk on which appellant was appointed and was working?

37. The Division Bench has dismissed the special appeal of the appellant solely relying on the fact that by dismissal of writ petition of Shiv Kumar Rai on 15.09.2001, the vacancy of post of Junior Accounts Clerk shall come to an end.

38. In the writ petition of Shiv Kumar Rai, interim order was passed on 27.11.1992 which was continued on 09.04.1993. It is submitted by the counsel for the appellant that cancellation of promotion of Shiv Kumar Rai on 11.11.1990 too was on account of claim of promotion raised by another accounts clerk Mr.Ram Sinhasan Rai. It is submitted that Ram Sinhasan Rai retired in 1999. Ram Sinhasan Rai was never promoted and interim order in favour of Shiv Kumar Rai continued till

Ram Sinhasan Rai retired in the year 1999. It is submitted that writ petition of Shiv Kumar Rai has been dismissed as infructuous by efflux of time which is clearly mentioned in the order dismissing the writ petition. The writ petition of Shiv Kumar Rai was not dismissed on merits. Writ petition was dismissed as infructuous by efflux of time without determination of any issue. Shiv Kumar Rai continued to work on his promotional post till he retired on 29.02.2008. When Shiv Kumar Rai did not revert on post of Junior Accounts Clerk and continued to work till his retirement, the dismissal of writ petition as infructuous cannot altogether wipe out the right of the appellant to continue on his post of Junior Accounts Clerk on which post Shiv Kumar Rai never returned in fact.

39. The report dated 27.04.2017 of District Handicapped Public Development Officer, Azamgarh addressed to Collector, Azamgarh, has been brought on record with regard to promotion of Shiv Kumar Rai, in which following facts have been stated:-

> " ...After inquiry, this fact came to light that the selection of Shri Singh has been made by the legally constituted Selection Committee at the vacant post of Junior Accounts Clerk due to the promotion of Shri Shiv Kumar Rai at the post of Assistant Accountant in the department. A representation was submitted by Shri Ram Sinhasan Singh, Junior Accounts Clerk working in the office of Finance and Accounts Officer of Basic Education, Azamgarh stating that he is senior to Shri Rai. Therefore, on the basis of seniority, he be promotied at the post of Assistant Accountant. Shri Rai was reverted to the post of Junior Accounts Clerk by order dated 11.11.1992 of Finance and Accounts Officer, Basic Education Azamgarh. Stay Order was obtained by Shri Rai of the order of reversion by the Hon'ble High Court of Allahabad by order dated 27.11.1992. The stay order dated 27.11.1992 was continued by order dated 09.04.1993. Shri Shiv Kumar Rai has retired from the

> promoted post of Assistant Accountant on 29.02.2008. Shri Rai and Shri Sinhasan Singh both have retired from their posts. After retirement, the case of mutual seniority has finished. Resultantly the lien/tenure of Shri Rana Pratap Singh at the post of Junior Accounts Clerk remained as earlier...”

40. In the rejoinder affidavit which was filed in the special Appeal, the report dated 27.04.2017 has been brought on record as Annexure RA-14. High Court dismissed the special Appeal on 06.02.2018 solely relying on dismissal of writ petition of Shiv Kumar Rai on 15.09.2001.

41. No exception can be taken to the legal position as enumerated by the Division Bench of the High Court in paragraphs 9 to 13. However, the Division Bench ought to have looked into the ground realities, facts, and subsequent events also. When Shiv Kumar Rai was never reverted on

his post and continued on his promotional post till his retirement, it will be taking a too technical view that vacancy of his original post shall come to an end by dismissal of the writ petition. More so, the writ petition was dismissed as infructuous on efflux of time without an adjudication on merits and without High Court being made aware of the subsequent events. The Division Bench did not advert to the other aspects of the matter which were adverted to by the learned Single Judge, without examining the correctness of the view taken by learned Single Judge, the Division Bench had dismissed the appeal solely relying on dismissal of above writ petition of Shiv Kumar Rai.

42. Learned counsel for the respondents had also submitted that the conduct of the appellant is not such that he may be entitled for any relief. It is

submitted that when the writ petition was dismissed by learned Single Judge on 02.02.2012 and special appeal came to be dismissed on 06.02.2018, the appellant was not entitled to continue or receive any salary. He submits that he had concealed the dismissal of writ petition from the department.

43. A perusal of the order of the High Court dated 02.02.2012 indicates that learned counsel for the parties were heard. The order dated 02.02.2012 was not an *ex parte* order and the appellant immediately filed an special appeal which is numbered as Special Appeal No.432 of 2012. The arguments of the respondents cannot be accepted that the appellant concealed dismissal of writ petition from learned Single Judge. More so, the appellant was allowed/continued by the respondents on his post and by order dated 01.08.2012, an

order of confirmation was also passed by the Department confirming him on the post of Junior Accounts Clerk from 22.12.1990 and on the post of Assistant Accountant w.e.f. 22.12.2004. The appellant was also given promotional scale of Assistant Accountant w.e.f. 22.12.2004. The Department having continued the appellant and granted him promotion and confirmation, It cannot be said that the appellant committed any concealment or mis-representation.

44. We further notice that appellant has been continuing on his post for the last twenty six years and even after dismissal of writ petition of Shiv Kumar Rai on 15.09.2001 more than eighteen years have passed. The appellant has been promoted on next higher post and working on the next higher post as on date.

45. Learned Single Judge has not correctly appreciated the issues as noticed and discussed above. The Division Bench rested its opinion on one issue without taking into consideration subsequent events and the fact that writ petition was dismissed as infructuous by efflux of time.

46. Taking into consideration entire facts and circumstances, we are of the view that judgment of learned Single Judge dated 02.02.2012 as well as the Division Bench deserve to be set aside. We Order accordingly. The appeal is allowed.

.....J.

(ASHOK BHUSHAN)

.....J.

(NAVIN SINHA)

NEW DELHI,
DECEMBER 18, 2019.