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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.824 of 2012
IN
Civil Writ Jurisdiction Case No. 2355 of 2012

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1. Jageshwar Prasad Singh S/O Sri Jugal Kishore Singh, Resident of Village- Bangar, P.O- Bangar, P.S- Daudpur, District- Saran And At Present Working On The Post Of Assistant Driller In Minor Irrigation Department.
2. Jai Bahadur Pandey S/O Late Ram Sudist Pandey, Resident of Village- Sanjoil, P.O- Singha, P.S- Barahra, District- Bhojpur And At Present Working On The Post Of Assistant- Driler.
3. Satyendra Kumar Singh S/O Late Shree Krishna Nand Singh, Resident of Village- Atarsan, P.O- Atarsan, P.S- Rasulpur, District- Saran At Present Posted On The Post Assistant- Driller.
4. Ram Subhag Singh S/O Late Dharam Nath Singh, Resident of Village- Mujouna, P.O- Mujouna, P.S- Dariyapur, District- Saran And At Present Working On The Post Of Assistnat Driller.
5. Bindeshwari Singh S/O Late Sri Indra Deo Singh, Resident of Village- Tarengna Kumharatoli, P.O- Maourhi, P.S- Masourhi, District- Patna And At Present Working On The Post Assistant Driller.
6. Md. Sahabuddin Ansari S/O Late Md. Jumaid Ali Ansari Resident Of Village- Tahwa, P.O- Tahwa, P.S- Jhajha, Distt- Jamui And At Present Working On The Post Of Assistant Driller.
7. Ram Awtar Verma S/O Sri Rohan Mahto, Resident of Village- Baradih, P.O- Barachhati, P.S- Barachhti, Distt- Gaya And Present Working On The Post Of Assistant Driller.
8. Surendra Prasad S/O Lakshmi Narayan Lal ,Resident of Mohalla- Salimpur Ahra, Dwarika Nath Lane, Kadamkuan, P.O- Bankipur, P.S- Gandi Maidan, Distt- Patna And At Present Working On The Post Of Asstt. Driller.
9. Quim Ansari S/O Late Asharffi Ali Ansari, Resident of Village- Bastipur, P.O- Manikpur, P.S- Dalmia Nagar, Distt- Rohtas And At Present Working On The Post Of Asstt. Driller.
10. Rajendra Yadav S/O Late Tilak Rai, Resident of Village- Saila Rampur, P.O- Saila Rampur, P.S- Hathauri, Distt- Muzaffarpur And At Present Working On The Post Of Asstt. Driller, Tube Well Dn. Biharsharif.
11. Saryu Sharma S/O Late Sarjan Sharma, Resident of Village- Dehri (Baruna), P.O- Rajpur Garhnokha, P.S- Rajpur Garhnokha, Distt- Rohtas And Present Working On The Post Of Asstt. Driller.

.... Petitioners- Appellants

Versus

1. The State of Bihar
2. The Principal Secretary, Minor Water Resources Department, Sichai Bhawan, Harding Road, Patna.
3. Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Finance Commissioner, Old Secretariat, Patna.
5. Secretary, Minor Irrigation, Vikash Bhawan, New Secretariat, Patna.
6. The Engineer-In-Chief Project Co- Ordinator Tubewell Project (Minor Irrigation Department), Nirman Bhawan, Patna.
7. The Executive Engineer, Tubewell, Dn. Patna.(East)
8. The Executive Engineer Tuewell, Dn. Gaya.
9. The Chief Engineer, South Tubewell Project, Minor Irrigation, Sheikhpura, P.O-

Sheikhpura, Distt- Patna.

.... Respondents- Respondents

with

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Letters Patent Appeal No. 105 of 2015

IN

Civil Writ Jurisdiction Case No. 2355 of 2012

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1. The State of Bihar
2. The Principal Secretary, Minor Water Resources Department, Sichai Bhawan, Harding Road, Patna.
3. Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Finance Commissioner, Old Secretariat, Patna.
5. Secretary, Minor Irrigation, Vikash Bhawan, New Secretariat, Patna.
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9. The Chief Engineer, South Tubewell Project, Minor Irrigation, Sheikhpura, P.O- Sheikhpura, Distt- Patna.

.... Respondents- Respondents

Versus

1. Jageshwar Prasad Singh S/O Sri Jugal Kishore Singh Resident Of Village- Bangar, P.O- Bangar, P.S- Daudpur, District- Saran And At Present Working On The Post Of Assistant Driller In Minor Irrigation Department.
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.... Petitioners- Respondents

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Appearance :

(In LPA No. 824 of 2012)

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Navjot Yeshu, Advocate

For the State : Mr. Tej Pratap Singh, AC to GP 17

(In No. 105 of 2015)

For the Appellant/s : Mr. Bimal Jee Verma, GP 17
Mr. Tej Pratap Singh, AC to GP 17

For the Respondent/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Navjot Yeshu, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Dae: 19-01-2015

IA No. 444 of 2015 (in LPA No. 105 of 2015)

This application under Section 5 of the Limitation Act is filed with a prayer for condonation of the delay of 2 years and 229 days in preferring the appeal.

It is stated that the delay occurred due to administrative reasons, and in the process of obtaining legal opinion to file the appeal. No counter affidavit has been filed opposing the prayer.

We are satisfied with the reasons assigned for condonation of the delay. Delay is condoned.

I A No. 444 of 2015 stands disposed of.

LPA Nos. 824 of 2012 and LPA No. 105 of 2015

These two Letters Patent Appeals under Clause 10 of the Letters Patent are filed challenging the very order dated 1.3.2012 passed by the learned Single Judge in CWJC No. 2355 of 2012 and as

such both the appeals are dismissed through a common judgment.

For the sake of convenience, the parties are referred to, as arrayed in LPA No.824 of 2012. The facts, relevant for the purpose of disposal of these appeals are as under.

The appellants were working as Assistant Drillers in the Tubewell Division in the Minor Irrigation Department of the State of Bihar. They were in the pay scale of Rs.535-765/-. All of them made representation to the concerned authorities, with a prayer to place them in the next higher pay scale of Rs.730-1080/-. Since no relief was granted to them, they filed CWJC No.1689 of 1989. A Division Bench of this Court disposed of the writ petition through order dated 25.10.1989. It was directed that the Executive Engineer of the Department shall examine the matter of the appellants and in case it is found that they are entitled for the higher pay scale, they shall be extended the benefit.

Stating to be in compliance with the order of this Court, the Executive Engineer, Tubewell Division, 7th respondent herein, passed the order dated 31.12.1990 placing the appellants in the pay scale of Rs.730-1060/- with effect from 1.4.1981. Accordingly the appellants were being paid salaries.

In the year 2003, the Deputy Secretary, Minor Irrigation Department, 3rd respondent, passed order dated 26.12.2001 directing recovery of the differential amount from the appellants, on the ground that they were not entitled to be placed in pay scale of Rs.730-1060/-. Aggrieved by that, the appellants filed CWJC No. 4452 of 2003. Learned Single Judge of this Court allowed the writ petition through order dated 31.7.2009 on the sole ground that the order impugned therein was not preceded by any show cause notice. However, it was directed that appropriate order be passed, after

issuance of a fresh show cause notice.

The 3rd respondent issued show cause notice, requiring the appellants to explain as to why, the benefit of higher pay scale extended to them in the year 1993, be not withdrawn. It was mentioned that the Executive Engineer was not competent to pass the order, that too without the consent or approval of the Department of Finance. The appellants submitted their explanation. Not satisfied with that, the 3rd respondent passed the order dated 10.10.2011 holding that the appellants are not entitled for the benefit; conferred upon them through order dated 31.12.1990; passed by the Executive Engineer.

The appellants filed CWJC No.2355 of 2012 challenging the order dated 10.10.2011. Learned Single Judge disposed of the same through order dated 1.3.2012 observing that it was competent for the 3rd respondent to pass the impugned order but it can be only prospective, in operation. While the appellants are not satisfied with the order passed by the learned Single Judge to the extent that the order impugned in the writ petition was upheld, and accordingly filed present LPA No. 824 of 2012; the State felt aggrieved by restriction of the scope of the order, to be prospective; and filed LPA No. 105 of 2015.

Heard Sri Rajendra Prasad Singh, learned senior counsel for the appellants in LPA No. 824 of 2012 and Sri Bimal Jee Verma, learned govt. counsel appearing for the appellants-State in LPA No. 105 of 2015.

The whole controversy is about the entitlement or otherwise, of the appellants, to be placed in the pay scale of Rs.730-1060/- which came to be introduced in the early eighties. After pursuing the remedy in the department, they approached this Court by

filing CWJC No. 1689 of 1989. This Court did not express any definite view on this aspect. The writ petition was simply disposed of by directing that in case the petitioners are found to be eligible, they shall be extended the benefit. The relevant sentence reads as under –

> "If the aforesaid facts are correct then the respondent no.2 and 7 will make payment to the petitioners in accordance with law and to the extent they are entitled to in the light of the aforesaid situation forthwith.
>
> With the aforesaid observations and directions the application is disposed of."

From a perusal of the said order, it becomes clear that this Court did not record any specific finding as to the entitlement of the petitioners; or the extent of the benefit. Rather, those aspects, were left to be decided by the respondent authorities. Almost one year later, the 7th respondent passed the order dated 31.12.1990. He found the appellants to be entitled to be placed in pay scale of Rs.730-1060/- with effect from 1.4.1981. No objection was raised in the Audit or by the superiors in the department; at any time. Not only the order passed by him was implemented but also the appellants were drawing their salary in the pay scale, so revised.

More than a decade later, the 3rd respondent passed order in the 2001 proposing to recover the differential amount, taking the view that the appellants were not entitled for the higher pay scale and directing recovery of the amount, straightway.

In CWJC No. 4452 of 2003 this Court found that the order passed by the 3rd respondent cannot be sustained in law since it was passed in violation of the principle of natural justice. It was left open to the 3rd respondent to pass fresh order.

For all practical purposes, it has to be proceeded on the assumption that the 3rd respondent swung into action, in the year 2001, through the order now impugned, is of the year 2011. Even then

11 years have elapsed since the 7th respondent passed the order dated 31.12.1990. The occasion to review an order, after such a long time would arise, if only it was tainted with factors like misrepresentation or fraud. Nothing of that sort was attributed to the appellants. From the narration itself, it becomes clear that the entire matter was directed to be examined by the concerned authorities, and after such examination, the 3rd respondent has extended the benefit of higher pay scale to the petitioners. Even in 2001 it was not alleged that the petitioners have made any misrepresentation or committed fraud that led to the passing of order dated 31.12.1990.

Assuming that a second view is possible on the facts, matter cannot be reopened after more than a decade. Added to that, the appellants have already attained the age of superannuation and retired from service. Over the past two decades, ever since the order dated 31.12.1990 was passed, several revisions of pay scale have taken place and at no point of time, objection was raised in the matter of fitting the appellants into any particular scale. Viewed from any angle, this Court does not find that the 3rd respondent to reduce the pay scale of the appellants or to recover the same.

Learned counsel for the respondents placed reliance upon the order passed by a Division Bench of this Court, dated 2.9.2014, passed in LPA No. 1405 of 2013. It may be true that the respondent therein was also an Assistant Driller and the steps taken for reduction of his pay scale were held to be lawful. The fact however remains that the Driller therein by name Ramadhar Singh was not a party to CWJC No. 1689 of 1989 filed by the appellants therein, nor his name figured in the order dated 31.12.1990. Hence, the same cannot be compared to that of the present case.

Therefore, we allow Letters Patent Appeal No. 824 of

2012 and modify the order dated 1.3.2012 in CWJC No. 2355 of 2012 to the extent that the order dated 10.10.2011 passed by the 3rd respondent shall stand set aside in its entirety. Consequently, Letters Patent Appeal No. 105 of 2015 filed by the State is dismissed.

Any other interlocutory application shall stand disposed of.

There shall be no order as to costs.

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(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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