

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1248 of 2015
IN
Civil Writ Jurisdiction Case No. 4107 of 2008

- =====
1. The Bihar State Food & Civil Supply Corporation Ltd. Through its Managing Director, Sone Bhawan, 4th and 5th floor, Birchand Patel Path, PS Sachivalaya, Dist. Patna
 2. Sri Brajesh Mehrotra, Managing Director, Bihar State Food & Civil Supply Corporation Ltd. Through its Managing Director, Sone Bhawan, 4th and 5th floor, Birchand Patel Path, PS Sachivalaya, Dist. Patna

.... Respondents- Appellant/s

Versus

1. Hare Kant Paswan son of Late Shibu Paswan, resident of Village Bagaras, PS Bagaras, PS Begusarai, District Begusarai

..... Petitioner-Respondent

2. The State of Bihar

....Respondent- Respondent/s

with

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Letters Patent Appeal No. 673 of 2015
IN
Civil Writ Jurisdiction Case No. 3974 of 2008

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1. The Bihar State Food and Civil Supplies Corporation through its Managing Director, Sone Bhawan, 5th Floor Birchand Patel Path, P.S. Sachivalaya, District Patna.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor Veer Chand Patel Path, P.S. Sachivalaya District Patna.
3. The Chief of Administration, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor Veer Chand Patel Path, P.S. Sachivalaya District Patna.
4. The In - charge, District Manager, Khagaria District Office, Bihar State Food and Civil Supplies Corporation Limited, Khagaria P.S . Khagaria, District - Khagaria.

.... Respondents/Appellant/s

Versus

Krishnadeo Chaudhary son of Late Jageshwar Chaudhary, resident of Khagaria, P.S. Khagaria, District - Khagaria.

.... Petitioner/Respondent/s

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Appearance :
(In LPA No. 1248 of 2015)

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr. Bhupendra Narain Sinha, Advocate
(In No. 673 of 2015)

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-07-2015

These two Letters Patent Appeals are filed against the judgment dated 22.4.2014 passed by the learned Single Judge in CWJC Nos. 3974 of 2008 and 4107 of 2008. The respondents in these two appeals are the employees of the Bihar State Food & Civil Supplies Corporation, Patna, the 1st appellant herein (hereinafter referred to as 'the Corporation').

Charge-sheets were issued against them alleging certain acts of misconduct in the course of discharge of their duties. The respondents submitted their explanations. Not being satisfied with the same, the appellant conducted the departmental enquiry. The enquiry officer submitted a report holding that the charges are not proved. The Disciplinary Authority, however, passed individual orders dated 22.11.2007 and 27.11.2007, respectively, against the respondents directing their compulsory retirement; in exercise of power under rule-29(B) of the Conduct and Disciplinary Rules of the Corporation. Challenging the same, the respondents filed the writ petitions.

The plea of the respondents was that once the charges were held not proved, there was absolutely no basis for retiring them compulsorily, by invoking rule-29(B) of the Rules of Corporation. The appellants pleaded that that the compulsory retirement ordered against the respondents was not by way of punishment and it was in the interest of efficient functioning of the Corporation. The learned Single Judge allowed the writ petitions and has set aside the orders of compulsory retirement. Hence, these two appeals.

Heard Sri Anjani Kumar, learned Senior Counsel for the Corporation and Sri Bhupendra Narain Singh, learned counsel representing the respondent in LPA No. 1248 of 2015. Though the notice was served upon the counsel for the respondent in the other appeal and his name was printed, he did not choose to appear.

It was certainly competent for the Corporation to initiate departmental proceedings against the respondents. It is a matter of record that the Disciplinary Authority held that the charges framed against the respondents are not proved. Two options were open to the Disciplinary Authority. The first was to accept the report and drop the proceedings, and the second was to issue a show cause notice to the respondents, requiring them to explain as to why the charges be not treated as proved, indicating the basic reasons therefor. The Disciplinary Authority, however, did not choose any of these options. Instead, he passed an order of compulsory retirement in exercise of power of rule-29(B) of the Rules of the Corporation.

It is no doubt true that the Corporation reserved to itself, the power to retire an employee before he attains the age of superannuation, if in the opinion of the Corporation, continuance of such employee is not in the public interest. Such action can certainly be upheld in case it is taken otherwise than through a measure of discipline. The fact that compulsory retirement happens to be one of the punishments, cannot be ignored. If an employee is retired on compulsory almost as a follow up to the disciplinary proceedings, it is difficult to hold that the entire disciplinary proceedings were not in the mind of the Disciplinary Authority and the order of compulsory retirement was passed independently and in pure exercise of power under rule-29(B) of the Rules of the Corporation. The learned Single Judge has taken the correct view of the matter and we do not intend to

interfere with the same.

One fact, which impresses us, is that the respondents were compulsorily retired in 2007 and ever since then, the Corporation did not have the benefit of their working. It was equally competent for the appointing authority to make the respondents herein retire before they attained the age of superannuation; with some time gap. Under the circumstances, we are of the view that the Corporation cannot be mulcted with the liability to pay the entire back wages, particularly when public funds are involved.

We, therefore, partly allow the appeals upholding the order passed by the learned Single Judge and setting aside the orders of compulsory retirement, but directing that the respondents shall be denied back wages to the extent of one-fourth. The Corporation shall be entitled to take into account the amounts paid by it in lieu of the notice.

(L. Narasimha Reddy,CJ)

(Anjana Mishra, J)

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