

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.360 of 2014
IN
Civil Writ Jurisdiction Case No. 19646 of 2012**

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Kishore Kumar Rai Son Of Late Kala Nand Roy Assistant Engineer, Local Area Engineering Organization, Works Division, Buxar, Presently Residing At Tara Tower, Flat No. 207, P.S. Shastrinagar, Patna- 23

.... Appellant

Versus

1. The State Of Bihar through the Principal Secretary, Department of Road Construction, Government of Bihar, Patna
2. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. B. K. Kanth, Sr. Advocate
Mr. Pramod Mishra, Advocate

For the Respondents : Mr. Kinkar Kumar, SC 27
Mr. Sushant Praveen, AC to SC 27

For the Intervenors : Bindhyachal Singh,
Akashdeep, Advocates

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CORAM : HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-05-2015

This appeal is preferred against the order dated
17th January, 2014 passed by the learned single Judge in
CWJC No. 19646 of 2012.

The unsuccessful petitioner is the appellant.

The facts pleaded by the appellant, in brief, are as under :

In the State of Bihar about 150 graduate Engineers were appointed under National Rural Employment Programme as well as in the Road Construction Department of the State as Junior Engineers and the appellant is one of them. In the year 1987, 146 Junior Engineers were designated as Assistant Engineers on *ad hoc* basis. On bifurcation of the State of Bihar, which took place in the year 2000, 42 such Assistant Engineers were made part of the establishment of the Jharkhand State, and the others including the appellant remained in the State of Bihar.

The *ad hoc* Assistant Engineers who continued in the State of Bihar filed CWJC No. 7580 of 2000 and batch, with a prayer to direct the State of Bihar to regularize their services as Assistant Engineers from the date of their initial appointment. According to them, though the candidates fulfilled the qualification for being appointed against the post of Assistant Engineers, they were appointed on daily wage basis as Junior Engineers in 1981, and thereafter in the year 1987 they have been promoted on *ad hoc* basis as Assistant Engineers. They pleaded that the

entire service rendered by them deserves to be treated as that in the post of Assistant Engineers on regular basis.

It appears that during the pendency of the batch of writ petitions, negotiations and discussions have taken place between the *ad hoc* Assistant Engineers and the State. On the basis of undertaking furnished by the Assistant Engineers, the Government in the Road Construction Department issued orders in memo no. 3535 (S) dated 28th March, 2012 whereby the 77 degree holder Junior Engineers, who possessed the prescribed qualifications, but were appointed on daily wage basis, were absorbed as Assistant Engineers subject to the condition that, (a) they shall be placed below the candidates appointed as Assistant Engineers on basis of recommendations of the Bihar Public Service Commission; either through direct recruitment or through promotion, and (b) they shall not claim revision of seniority assigned to them, nor shall they challenge the scheme of absorption. It was also directed that the services rendered by them shall be counted for the purpose of pension and earned leave, and they shall also be entitled for the benefit of pay protection.

Taking note of these developments, a Division Bench of this Court disposed of the batch of writ petitions as

infructuous through order dated 3rd April, 2012.

The appellant herein filed the present CWJC with a prayer to direct the respondents to count his *ad hoc* services for the purpose of seniority as well as for promotion, Assured Career Progression (A.C.P.) and other reliefs which he is entitled to in law. The writ petition was opposed by the respondents. Learned single Judge dismissed the writ petition by taking note of the resolution dated 27th May, 2013 which was filed in the writ petition as Annexure-9.

Sri B. K. Kanth, learned Senior Counsel appearing for the petitioner submits that once the appellant was found to be eligible to be appointed as Assistant Engineer at the initial stage itself, there is no basis to deny him the benefit of that post. He has placed reliance upon the judgment of the High Court of Jharkhand at Ranchi dated 8th November, 2011 in L.P.A. No. 256 of 2011, and the subsequent orders passed by the Hon'ble Supreme Court. Hence, the Appeal.

Sri Kinkar Kumar, learned Standing Counsel No. 27 appearing for the State and Sri Bindhyachal Singh and Sri Akashdeep, learned counsels appearing for the intervenors submit that the matter pertaining to regularization of the Assistant Engineers, including the



appellant assumed finality with the memo dated 28.03.2012 which was issued on the consent of the Assistant Engineers and the appellant cannot seek reopening of the matter. They submit that the matter pertaining to the Engineers in the State of Jharkhand is totally different and there is no comparison between the two.

There is serious dispute as to the nature of appointment of the appellant and about 140 others in the year 1981. Across the bar, learned Senior Counsel stated that the proposal was to appoint Assistant Engineers but the selected candidates were required to work as Junior Engineers. However, from the record, we find that the engagement of the appellant and others, made in the year 1981 was only on daily wage basis in the posts of Junior Engineer. In the year 1987 they have been designated as Assistant Engineers on *ad hoc* basis, with a specific condition that the same shall be subject to their selection and clearance by the Bihar Public Service Commission. It is not in dispute that the selection of Junior Engineers and Assistant Engineers, in various departments of the State of Bihar, is within the purview of the Public Service Commission, and it is only on being selected by the Service Commission, that a valid appointment could have been

made.

The second area of uncertainty is about comparison of the *ad hoc* Assistant Engineers, who started working in the State of Jharkhand from the year 2000 with those who continued in the State of Bihar. A perusal of the order in L.P.A. No. 256 of 2011 passed by the High Court of Jharkhand discloses that the service of the candidates, who are working in the State of Jharkhand, was the subject matter of several proceedings, and at one stage they were sought to be discontinued from service. It is from that, the litigation started, and various orders have been passed. In contrast, the *ad hoc* Assistant Engineers in the State of Bihar filed a batch of writ petitions with a prayer to regularize their services.

During the pendency of those writ petitions, an important development has taken place. The Government agreed to treat the appointment of *ad hoc* Assistant Engineers on regular basis subject to certain conditions. The fact that ever since 1987 several batches of Assistant Engineers were appointed on the recommendation of the Public Service Commission, be it as direct recruits or promotees, and such appointees are working on regular basis for the past several years. Realizing that the



regularization of services of the appellant and other similarly situated candidates should be without prejudice to the regular appointees, certain conditions were imposed, even while extending the benefit of regularization to the appellant and others. All such candidates were placed below the candidates who were appointed or promoted as Assistant Engineers on the recommendations of the Public Service Commission. This accords with the principle of law, on the subject. The appellant and others have also furnished an undertaking to the effect that they would not claim seniority over the regularly appointed Assistant Engineers. The benefit of pay protection was granted and even the *ad hoc* service was directed to be treated as holding good for the purpose of pension and other similar benefits. All this is contained in Annexure-9. In case the appellant or other persons similarly situated to him were not satisfied with the conditions of Annexure-9, it was open for them to challenge the same. Instead, the appellant has filed the writ petition claiming relief in the teeth of Annexure-9. Learned single Judge took note of the fact that as long as Annexure-9 stands, the appellant cannot claim any benefit beyond the terms thereof.

Learned Senior Counsel for the appellant made

strenuous effort to convince us to extend the relief to the appellant, on the same lines as was done by the Jharkhand High Court in L.P.A. No. 256 of 2011. We have already mentioned that facts of that case, or the circumstances under which the relief was granted are totally different. Our attention is also drawn to the order passed by the Hon'ble Supreme Court in a contempt proceeding. Once the origin of litigation itself is different in both sets of proceedings, the question of their being treated on par with does not arise. The relief granted by the Hon'ble Supreme Court was on the facts of that case, that too in the contempt proceedings. Had a general principle been laid down, we would have religiously followed it.

We do not find any merit in the appeal and the same is dismissed. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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