

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.729 of 2011

IN

Civil Writ Jurisdiction Case No. 5894 of 2007

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1. The State of Bihar.
 2. The Secretary, Road Construction Department, Vishweshraiya Bhawan, Government of Bihar, Patna.
 3. The Deputy Secretary, Road Construction Department, Vishweshraiya Bhawan, Government of Bihar, Patna.
 4. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
 5. The Chief Engineer, N.H. Road Construction Department, Vishweshraiya Bhawan, Government of Bihar, Patna.
 6. The Superintending Engineer, N.H. Work Circle, Government of Bihar, Patna.
 7. The Executive Engineer, N.H. Division, Gulzarbagh, Patna.
 8. The Secretary, Personnel and Administrative Department, Government of Bihar, Patna.
 9. The Chief Secretary, Government of Bihar, Patna.

.... Appellants

Versus

Md.Abu Raza Hashmi, son of Late Mehdi Hasan, Resident of village Bahapur, P.S. Bakhtiyarpur, District – Patna, at present residing at Mohalla Dargah Shah Arzan, P.S. Sultanganj, District – Patna.

.... Respondent

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Appearance :

For the Appellants : Mr. Lalit Kishore, P.A.A.G.
Mr. Harishankar Roy, A.C. to P.A.A.G.
For the Respondent : Mr. Siya Ram Shahi, Advocate
Mr. Md. Anisur Rahman, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 03-11-2015

Heard learned counsel for the State and learned
counsel for the private respondent, who was the writ

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petitioner, and with their consent, this Intra Court Appeal is being disposed of at this stage itself.

2. The writ petitioner was working in work charge establishment under the National Highway Road Construction Division. In 1991, he along with several others filed a writ petition before this Court for their regularization and regular payment of their remuneration.

3. The writ petition was taken up by a Division Bench presided by the then Chief Justice, and was disposed of in 1991 itself, with a clear direction that, in view of the fact noted, the writ petitioners would be absorbed permanently with effect from 01.05.1991, and accordingly be paid their remuneration regularly. This inter party order, having become final and binding, was not complied with. Accordingly, an application for initiating contempt proceedings was filed by the writ petitioner and several others. The plea of the department was that out of 45 persons, who were the writ petitioners, about 22 had been regularized and process was underway to regularize the balance including the petitioner pursuant to the writ court's order, and it would be done immediately. Upon this undertaking, the application for initiating contempt proceeding was dropped.



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4. It may be noted that when the new Chief Engineer came, instead of implementing the order of the Court or abiding by the undertaking given before the Court, he dismissed the writ petitioner, holding that the then Chief Engineer who had made the appointment, had no authority to do so. He completely ignored the judgment inter party. He held that there could be no regularization. This is what brought the writ petitioner to come once again.

5. The learned Single Judge held that, the inter party judgment, having attained finality, was binding, and therefore, it rightly, in our view, rightly so, set aside the order of dismissal and issued direction to abide by the inter-party judgment and undertaking. There is no option available to the State. A inter-party judgment, which has attained finality, cannot be ignored or cannot be circumvented, so long as the judgment holds good not having been set aside by a superior court.

6. In support of this Intra Court Appeal, learned counsel for the State draws attention of this Court to an interim order passed by the Apex Court in a SLP filed by the State of Bihar It is submitted that, the said case arises from a similar matter and the Apex Court has stayed the



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judgment of this court. On specific query, it is admitted that it is not the same batch of cases. Here, in the writ proceeding, from which this appeal arises, the question was, with regard to obedience and implementation of the judgment and order of this Court, inter-party, passed in the year 1991. That judgment, inter-party, cannot lose its efficacy, even if, in any other case, the law is decided otherwise. The judgment inter party would continue to bind and its binding effect can be taken away only by its reversal or modification in a duly constituted appellate proceedings and not infringe, otherwise.

7. Thus, we find no merit in this appeal. It is, accordingly, dismissed. The writ petitioners would have to be deemed to be regularized with effect from 01.05.1991, as was the Division Bench judgment, at the first instance.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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