

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.485 of 2012**  
**IN**  
**Civil Writ Jurisdiction Case No. 5034 of 2007**

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1. The State of Bihar  
2. The Secretary, Minor Irrigation Department, Government of Bihar, Patna  
3. The Secretary, Finance Department, Government of Bihar, Patna  
4. The Deputy Director, Under Ground Water Irrigation Division, Bhagalpur  
..... Appellant/s

Versus

1. Upendra Kumar Sinha S/O Late Ramautar Prasad R/O Village- Kanhaiya Chak,  
Via-Parwatta, P.S.- Parwatta, Post- Kanhaiyachak, District- Khagaria.  
Petitioner- Respondent.  
2. The Accountant General, Bihar, Patna  
..... Respondent-Respondent/s

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**Appearance :**

For the Appellant/s : Mr. S. Arshad Alam, S.C.-3  
Mr. Fakhruddin Ali Ahmad, A.C. to S.C.-3  
Mr. Mritunjay Kumar Jha, A.C. to S.C.-3  
For the Respondent no.1 : Mr. Sanjay Kumar, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**And**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 21-07-2015**

The State has filed this Letters Patent Appeal, feeling aggrieved by the order dated 20.10.2011 passed by the learned Single Judge in CWJC No.5034 of 2007.

The 1<sup>st</sup> respondent herein filed the writ petition challenging the order dated 11.06.2007 (Annexure-9) and another order dated 27.08.2009 (Annexure-12).

Briefly stated, the facts are that the 1<sup>st</sup> respondent was initially appointed as Operator in the Tubewell Division, Khagaria in the year 1973. In the year 1974, the organization of State Tubewell



was vested in the Bihar Water Development Corporation Limited. There, the 1<sup>st</sup> respondent was appointed/ designated as Junior Engineer in the year 1979. In the year 1986, the Bihar Water Development Corporation Limited was taken over by the Minor Irrigation Department of the State of Bihar. The services rendered in the Bihar Water Development Corporation were also reckoned.

The 1<sup>st</sup> respondent retired from service in the year 2004 on attaining the age of superannuation. He made representation for granting the benefit of Assured Career Progression (ACP) on completion of five years of service as Junior Engineer. During the pendency of the writ petition, the Department itself issued proceedings in the year 2007 granting ACP, but with effect from the date on which he completed five years service in the Minor Irrigation Department. He made a representation once again stating that he is entitled to be granted that benefit with effect from the date on which he was appointed/ designated as Junior Engineer in the Bihar Water Development Corporation in the year 1979. That contention was rejected through order dated 27.08.2009. The same was challenged in the writ petition. The writ petition was allowed setting aside the orders and remanding the matter for fresh consideration.

Heard Sri S. Arshad Alam, learned Standing Counsel-3 for the appellants and Sri Sanjay Kumar, learned counsel for the

respondent no.1.

The 1<sup>st</sup> respondent served as many as three organizations while in service. Initially, he entered the service of State Tubewell Division as an Operator. That organization was taken over by the Bihar Water Development Corporation Limited. It is there, that the appellant came to be appointed/designated as Junior Engineer. There is serious controversy as to the circumstances under which the 1<sup>st</sup> respondent came to be appointed/ designated as Junior Engineer. The learned Single Judge took note of these aspects and held that the service rendered by the 1<sup>st</sup> respondent in the Bihar Water Development Corporation Limited shall also be taken into account. Certain observations were also made about the scale of pay.

We are of the view that once the learned Single Judge has set aside both the orders and remitted the matter, it should be left open to the appellants herein to examine the matter in detail with reference to the relevant Rules and to pass a fresh order. It is needless to mention that none of the observations can be treated as final adjudication. However, since the 1<sup>st</sup> respondent has already retired from service, the order, as directed by the learned Single Judge, must be passed within two months from today.

We, therefore, dispose of the Letters Patent Appeal with the above observation and fix two months from today, for the

appellants to pass a fresh order, duly taking into account, the purport of the scheme of A.C.P as well as the nature of the appointment of the 1<sup>st</sup> respondent herein. Depending upon the nature of the orders that may be passed by the appellants, it shall be open to the 1<sup>st</sup> respondent to pursue the remedies.

Interlocutory application, if any, shall stand disposed of.

There shall be no order as to costs.

**(L. Narasimha Reddy, CJ)**

**(Anjana Mishra, J)**

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