

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1279 of 2014

In

Civil Writ Jurisdiction Case No. 12298 of 2011

With

Interlocutory Application No. 6998 of 2014

And

Interlocutory Application No. 6999 of 2014

In

Letters Patent Appeal No.1279 of 2014

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1. The State of Bihar

2. The Principal Secretary, Rural Development Department, Govt. of Bihar,
Patna

3. The Chief Engineer, Rural Engineering Organization, Bihar, Patna

4. The Superintending Engineer, Rural Engineering Organization, Work
Circle, Muzaffarpur

5. The Executive Engineer, Rural Engineering Organization, Work
Division, Muzaffarpur

.... Respondents/Appellants

Versus

1. Suresh Chandra Srivastava S/o late Sukhdeo Prasad Srivastava R/o Vill-
Jhapha, Ganghati, P.S.- Ahiyapur, District- Muzaffarpur

2. Chandra Madhav Chaudhary, S/o Sri Kunjan Chaudhary, R/o Vill+ P.O.-
Dariyapur Kafan, P.S.- Kurhani, District- Muzaffarpur

3. Shambhu Dubey, S/o Sri Buchkun Dubey R/o Village- Situahi, P.S.-
Karnaul, P.S.- Sahebganj, District- Muzaffarpur

4. Lakhindra Sah S/o Late Ganesh Sah R/o Vill- Deghra Rampur Sah, P.S.-
Sadar, District- Muzaffarpur

5. Sone Lal Das, S/o Sri Chulhai Das, R/O Vill+ P.S.- Maraul, P.S.- Sakra,
District- Muzaffarpur

6. Md. Sidiquee S/o Md. Habib R/o Vill- Sarmastra, P.O.- Kerma, P.S.-
Kurhani, District- Muzaffarpur

7. Ram Bachan Singh Sri Rijhan Singh R/o Vill- Chiknauta Bahas, P.O.
Chapra Bahas, P.S.- Sugauli, District- East Champaran at Motihari

.... Petitioners/Respondents

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Appearance :

For the Appellant/s : Mr. Subhash Prasad Singh, GA 7



Mr. Shiv Kumar, AC to GA 7
For the Respondent/s : Mr. Vijay Kumar Singh, Advocate
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CORAM: HONOURBLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE I. A. ANSARI
ORAL ORDER
(Per: **HONOURABLE THE CHIEF JUSTICE**)

4 08-01-2015

I A No. 6998 of 2014

This application under Section 5 of the Limitation Act has been filed with a prayer to condone the delay of 497 days in preferring the present Letters Patent Appeal. In the application it is stated that the delay occurred in course of taking administrative decision and obtaining legal opinion.

No counter affidavit has been filed opposing the application for condoning the delay.

After hearing learned counsel for the parties, we are satisfied with the reasons to condone the delay in preferring the appeal. The delay is condoned.

I A No. 6998 of 2014 stands disposed of.

Letters Patent Appeal No. 1279 of 2014

The respondents in CWJC No. 12298 of 2011 preferred this appeal, feeling aggrieved by the order dated 16.10.2012 passed by the learned Single Judge. The respondents herein filed the writ petition with a prayer to direct the appellants to regularize their services. The writ petition was allowed by the learned Single Judge.

Briefly stated, the facts are that the respondents were engaged in the work-charged establishment by the appellant-State of Bihar between 1980 and 1983. Thereafter they have been extended the benefit of pay-scale and other service benefits. Their grievance was that the appellants did not regularize their services

although they have fulfilled all the conditions.

The writ petition was opposed by the appellants by filing counter affidavit. It was stated that the Bihar Public Works Department Code and the relevant Rule governing the work-charged establishment have been amended in 2005. According to them, an employee who joined the work-charged establishment would become entitled to be regularized if only he has served for five years in the work-charged establishment and that the petitioners did not fulfill that condition. The learned Single Judge has made reference to the Rule 60 of the Bihar Public Works Department Code, Volume-I as well the order of this Court dated 3.5.2007 passed in CWJC No.16060 of 2004 and allowed the writ petition, through the order under appeal.

Heard learned counsel for the appellants and learned counsel for the respondents.

The controversy is in a very narrow compass. It is not in dispute that the respondents were engaged in work-charged establishment, between 1980 and 1983. There is no denial of the fact that they continued in service thereafter, and were extended the benefit of regular pay-scale. Rule 59 of the Bihar PWD Code becomes relevant in this connection. It reads –

“59. Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or sub-works of a specific project, or upon the subordinate supervision of departmental labour, stores and machinery in connection with such work or sub-work. When employees borne on the temporary establishment are employed on work of this nature, their pay should, for the time being, be charged direct to works.

Note 1.- Chief and Superintending Engineers are empowered, in consultation with the Accountant General, to classify as “work charged” or “temporary”

classes of establishment not covered by the definition, to waive the rule which prescribes that work-charged establishment must be employed on a specific work, and to determine in such cases the proportion in which the cost of such establishment shall be allocated between the works concerned.

Note 2. - No post carrying a remuneration, the maximum of which exceeds Rs.400, can be sanctioned as work-charged establishment.

Note 3.- Posts borne on work-charged establishments which are required throughout the year for maintenance work, etc., or for a long and indefinite period should be made permanent and included in the permanent establishment with the approval of Government.”

From a perusal of the same it becomes clear that the employment in the work-charged establishment is temporary in nature and if it continues beyond one year or for a longer and indefinite period, then the worker is entitled to be made permanent and included in the permanent establishment; with the approval of the Government. That the respondents were continued in the work-charged establishment beyond one year is not undisputed. Note 3 of Rule 59 of the Bihar PWD Code becomes applicable and the respondents are entitled to be included in the permanent establishment.

Similar question was dealt with by this Court in CWJC No. 16060 of 2004 and the order passed therein was upheld by the Hon'ble Supreme Court. The plea raised by the appellants that the Rule was revised at a later stage cannot be taken into consideration. The reason is that once the respondents have completed one year of service, they acquired the right to get the benefit under Note 3 of Rule 59 of the Bihar PWD Code and the mere fact that the Rule was amended at subsequent stage, does not

make a difference.

The learned Single Judge has rightly allowed the writ petition. We do not intend to interfere with the order passed by the learned Single Judge in CWJC No.12298 of 2011 on 16.10.2012.

Letters Patent Appeal is dismissed.

All the Interlocutory Applications shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(I. A. Ansari, J)

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