

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1531 of 2012

IN

Civil Writ Jurisdiction Case No. 8946 of 2011

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Shailendra Kumar Singh S/O Sri Ramakant Prasad Singh R/O Village-
Bhagwanpur Kamla, P.S.- Ujiyarpur, District- Samastipur

.... Appellant

Versus

1. The State of Bihar.
2. Principal Secretary, Department of Water Resources, Bihar, Patna.
3. Director, Revenue Administration Department of Water Resources,
Bihar, Patna.
4. Deputy Collector, Revenue Division Department of Water
Resources, Motihari.
5. Superintending Engineer, Water Sub-Divisional Circle, Motihari.
6. Executive Engineer, Sikrahna Embankment Division, Motihari.

.... Respondents

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Appearance :

For the Appellant : Mr. Mukesh Kumar

For the Respondents : Mr. Sunil kr. Mandal SC24

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

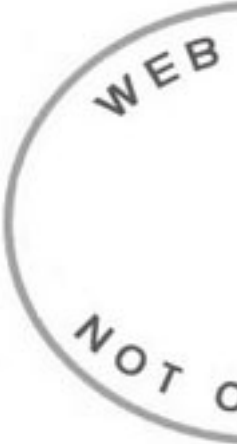
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 07-12-2015

This Intra-Court Appeal is by the writ
petitioner.

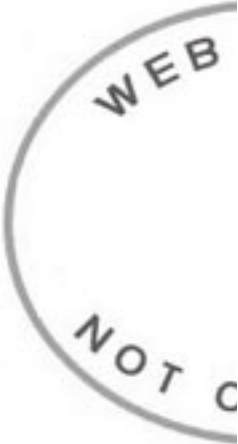
Heard learned counsel for the writ
petitioner/appellant and learned counsel for the State.

This appeal is filed against judgment and order
dated 25.08.2011 passed in C.W.J.C. No. 8946/2011,
whereby the writ petition filed by the petitioner to treat him
as regularized and grant the pay scale similar to those who



were regularized in 1997 in terms of the recommendation made on 14.07.1997. The learned Single Judge held that as the writ petitioner/appellant, though, was in the list recommended for regularization being list dated 14.07.1997, he was, in fact, regularized pursuant to the writ issued by this Court with effect from 17.05.2005, he would, thus be entitled to all benefits only from 17.05.2005 and could not be granted benefits from 14.07.1997. It is this, that is challenged in this appeal, on the ground that if the respondents State delayed the matter of regularization and default in compliance with its own recommendation, the writ petitioner/appellant cannot be deprived of his benefits. In other words, what the learned counsel for the writ petitioner/appellant submits that, the State cannot benefit from and/or deprive the petitioner of benefit because of State had defaulted.

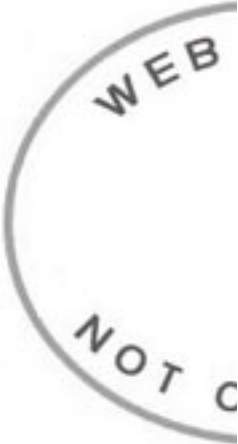
Having considered the matter, in our view, the order of learned Single Judge cannot be sustained. Writ petitioner/appellant was appointed as a Typist in the Revenue Division of Gandak Project, Motihari on 09.12.1987. He continued to work as such. He then sought regularization. The Bihar Water Resources Department



constituted a High Level Committee and after due deliberation the High Level Committee came to a finding that those who had been temporarily appointed prior to 1992 should be regularized. Ultimately, a panel was prepared and a decision was taken to regularize all such appointees by decision dated 14.07.1997. A large number of persons mentioned therein were immediately regularized in service by the State, but writ petitioner/appellant was left out. Being aggrieved by this discriminatory action on the part of State, the writ petitioner/appellant filed C.W.J.C. No. 14192/2002, which was allowed by judgment and order dated 01.03.2005, wherein this Court clearly held thus:

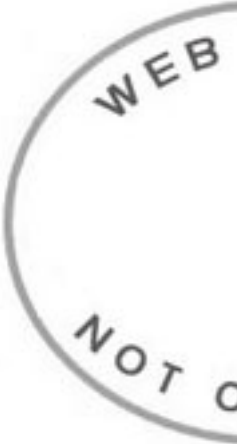
“The respondents cannot be permitted to take shifting stand at their convenience and challenge their own orders. Let mandamus issue directing the respondents to forthwith implement the decision dated 14.07.97 with regard to the petitioner issued in pursuance of the government direction dated 2.05.92 reiterated on 5.01.96.”

Pursuant to the aforesaid mandamus issued, writ petitioner/appellant was regularized in the substantive capacity on 17.05.2005, but on initial scale. This brought



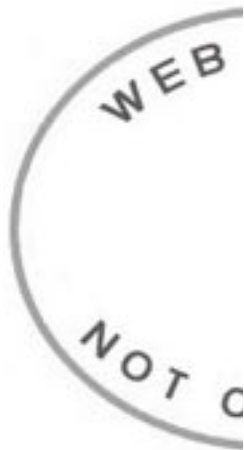
the petitioner to this Court once again in the present writ petition i.e. C.W.J.C. No. 8946/2011. The grievance of the petitioner was that, by decision dated 14.07.1997, a large number of persons were directed to be regularized, they were regularized, but petitioner, who figured in the said list, was left out on wrong and misconceived grounds. Petitioner was not at fault. It was only after the writ court issued mandamus that petitioner was substantively regularized on 17.05.2005. Thus, for the default committed by the State, writ petitioner/appellant could not be deprived of the benefit that had accrued to him by virtue of the government decision dated 14.07.1997. The learned Single Judge held that writ petitioner/appellant could not claim benefit from the date prior to regularization.

We are unable to subscribe that it is well settled principle of law that if a person commits a default he cannot be heard to say that because he has committed a default the right of the other is defeated. We cannot but refer to what was said by Chief Justice Chagla a more than half century back in the case of *All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City*, AIR 1954 Bombay 232 :



“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

Then, this stand, State being state, is bound to act fairly and protect the right of the citizen. More so, being a welfare State to do what is just and proper for its employees. We, accordingly, allow this appeal, setting aside the order of learned Single Judge, and direct the State that the writ petitioner/appellant would be deemed to be regularized in substantive capacity though with effect from 17.05.2005, he would be put in the same pay scale as his



other colleagues, meaning thereby that, he would be granted benefit of continuity of service as a regularized employee from 1997 or the date when others in the said list were regularized without actual financial benefits for the past three years.

With these observations and directions, this appeal is allowed, and the judgment of the learned Single Judge is set aside. Let a mandamus be issued accordingly to the State.

(Navaniti Prasad Singh, J.)

(Anjana Mishra, J.)

Rajeev/N.A.F.R.

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