

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1998 of 2016

IN

Civil Writ Jurisdiction Case No. 534 of 2012

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The Jharkhand State Electricity Board, Ranchi, presently Jharkhand Urja Vikas Nigam Limited through its General Manager-cum-Chief Engineer, Transmission Zone III, Jharkhand Urja Sancharan Nigam Limited, Campus Office at 132/33 KV Grid Sub-Station, Gamharia, District Saraikela Kharsawan, Jharkhand

.... Appellants

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Member (Administration), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
6. Vishwanath Singh, son of Sri Ram Nandan Singh, resident of village Pareyan, Post Garahuan, Police Station Kurhani, District Muzaffarpur, presently residing at village Bhikhanpura (South), P.O. H.P.O, Muzaffarpur, Police Station Sadar Bhagwanpur, District Muzaffarpur

.... Respondents

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Appearance :

For the Appellant : Mr. Satyavrat Verma, Advocate

For Respondent-Board: Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 17-11-2016

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

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 3rd of October, 2012 in CWJC No. 534 of 2012 whereby the learned Single Bench allowed the writ petition and ordered for grant of payment of retiral benefits consequent to discharge of the writ applicant vide order dated 19th of

July, 2004.

3. Initially, the service of the writ applicant was dismissed vide order dated 23rd of December, 1997 but effective from 1st of May, 1996. Such order was set aside on 13th of March, 1999 in a writ application by this Court and the matter was remitted to the competent authority to consider the matter afresh. Subsequently, the writ applicant was directed to be compulsory retired with effect from 1st of May, 1996 vide order dated 20th of July, 1999. The order of compulsory retirement was set aside on 31st of July, 2003 in CWJC No. 3679 of 2000. It is thereafter, an order was passed by the Chairman of the Bihar state Electricity Board on 19th July, 2004 of his discharge from service with effect from 1st of May, 1996. The order of discharge contemplated that the writ applicant would be entitled to post retiral dues in terms of Rule 46 of the Bihar Pension Rules.

4. The challenge to the order of discharge remained unsuccessful when CWJC No. 7280 of 2004 was dismissed on 3rd of May, 2007 and LPA No. 545 of 2007 preferred by the writ applicant affirmed such order on 6th of July, 2011. It is thereafter, the writ applicant sought for payment of retiral dues which petition has since been allowed by the learned Single Bench.

5. Learned counsel for the appellant submitted that the writ applicant is not entitled to retiral benefits since such relief was not claimed and/or granted in the earlier writ petition filed by him when the order dated 19th of July, 2004 was challenged. It is argued that the writ

application subsequently filed by the applicant is barred by the principle of constructive res judicata.

6. We have heard learned counsel for the appellant and find no merit in the present appeal. The fact is that in an earlier writ petition, the challenge was to the order of discharge. Once the challenge to the order of discharge has remained unsuccessful, the writ applicant is entitled to the consequential benefits which has been conferred by the order of discharge itself i.e. post retiral dues in terms of Rule 46 of the Bihar Pension Rules. There is no question of constructive res judicata as the order of discharge dated 19th of July, 2004 itself contemplates the retiral dues in terms of Rule 46 of the Bihar Pension Rules. The writ applicant has sought to enforce the payment of retiral benefits by way of present writ application, which has been allowed.

7. We do not find any error in the order passed by the learned Single Bench which may warrant interference by this Court. The Letters Patent Appeal is accordingly dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/Ibrar

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