

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1118 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 684 of 2014
Along with
Interlocutory Application No.4767 of 2015

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Manoj Kumar, son of Bharat Prasad Yadav, Resident of Flat No. 202, Prem Kunj Apartment, Mazar Gali, Shekhpura, Patna - 14.

.... Petitioner-Appellant/s

Versus

1. The Union of India the Secretary, Ministry of Shipping, Road Transport and Highways, Border Roads Development Board, B Wing, 4th Floor, Sena Bhawan, New Delhi - 11.
2. The Secretary, Public Works Department, Bihar, Patna Vishweshwariya Bhawan, Bailey Road, Patna.
3. The Secretary, Road Construction Department, Bihar, Patna Vishweshwariya Bhawan, Bailey Road, Patna.
4. The Deputy Secretary, Road Construction Department, Bihar, Patna Vishweshwariya Bhawan, Bailey Road, Patna.
5. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited, Patna, 7, Sardar Patel Marg, Patna - 15.

.... Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar, (in person)
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-10-2016

Re.: Interlocutory Application No. 4767 of 2015

The application is for condonation of delay of 9 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters

Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1118 of 2015

The present Letters Patent Appeal is directed against an order passed by a learned Single Bench of this Court on 4th February, 2015 whereby, the writ application filed by the appellant claiming pay protection on the basis of services rendered as Assistant Executive Engineer in the Border Road Organization under the Union of India remained unsuccessful.

2. The appellant argued that his technical resignation from GREF service was accepted by the Border Roads Development Board under the Ministry of Shipping, Road Transport and Highways on 18th of July, 2005, therefore, he is entitled to the benefit of services rendered under the Border Road Organization in the State of Bihar. It is contended that the letter accepting technical resignation contemplates that the resignation will be treated as technical for getting benefits of GREF service as per Rules.

3. Learned Single Judge dismissed the writ application finding that there is no rule of the State of Bihar which permits the previous service rendered with the Union of India for the purposes of pay protection or seniority. In the absence of any rule giving pay protection, the writ application was dismissed.

4. We have heard the appellant and find no merit in the

present appeal. The letter accepting technical resignation shows that the appellant will be entitled to get benefits of service as per the rules. The rules in the present case would be the rules of the State of Bihar. The appellant would be entitled to the benefit of the service rendered in the Border Road Organization only if the rules of the State of Bihar permit the counting of the service rendered by an employee in another organization under a different employer. The appellant could not point any rule which permits counting of his service under the Government of India for the purposes of pay protection in the State of Bihar. In the absence of any rule, merely because technical resignation of the appellant was accepted will not entitle him for the benefit of past service rendered by him with the Government of India. In the absence of any rules, the appellant is not entitled to the benefit of past service from the State of Bihar.

5. The Letters Patent Appeal is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	A. F. R.
CAV DATE	N. A.
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