

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.11 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 21105 of 2013
Along with
Interlocutory Application No. 16 of 2015

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1. Ramesh Prasad Singh, S/O Late Ram Saran Singh, R/O- Village- Bishunpur Basudeo, P.S.- Runnisaidpur, Distt.- Sitamarhi, At present residing at Sheikhpur, Akharaghat, P.S.- Ahiyapur, Town And Distt.- Muzaffarpur
 2. Krishna Nandan Singh, S/O Late Ramashish Singh, R/O- Vill.- Sonebarsa, P.S.- Tariyani, Distt.- Sheohar, At present residing at Chanakyapuri, P.S.- Ahiyapur, Town and Distt.- Muzaffarpur
 3. Sudhir Kumar Madhukar, S/O Late Kolhari Mahto R/O- Vill.- Konipar, Manikpur, P.S.- Suryagarha, Distt.- Lakhisarai
 4. Uday Shankar Mishra, S/O Late Brajmaya Mishra, R/O- Sheikhpur, Akharaghat, P.S.- Ahiyapur, Town and Distt.- Muzaffarpur
 5. Vijay Kumar Sinha Son of Late Parasnath Prasad R/O- Saketpuri, Bibiganj, P.S.- Muzaffarpur (Sadar), Distt.- Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar through Its Chief Secretary, Govt. Of Bihar, Old Secretariat, Patna
2. Principal Secretary, Finance Department, Govt. of Bihar, Patna
3. Finance Commissioner, Govt. of Bihar, Patna
4. Principal Secretary, Water Resources Development Department, Govt. of Bihar, Patna
5. Deputy Secretary, Command Area Development Directorate, Water Resources Department, Govt. of Bihar, Patna
6. Gandak Command Area Development Agency, Muzaffarpur, through Its Secretary
7. Area Development Commissioner-Cum-Chairman-Gandak Command Area Development Agency, Muzaffarpur
8. Secretary, Gandak Command Area Development Agency, Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Dr. Uma Shankar Prasad, Sr. Advocate.
Mr. Kamala Kant Tiwary, Advocate.

For the State : Mr. Manoj Kumar Ambastha, GP-14
Mr. Subodh Kumar, AC to GP-14

For the Rsp. No. 6 to 8: Mr. Satish Chandra Jha, Advocate.

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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: 16-05-2016

Re. Interlocutory Application No. 16 of 2015

The application is for condonation of delay of 129 days in filing of the appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 129 days in filing of the appeal is condoned.

3. Interlocutory Application stands disposed of.

Re. Letters Patent Appeal No. 11 of 2015

The order dated 24.03.2014 passed by the learned single Bench in CWJC No. 21105 of 2013 is the subject matter of challenge in the present Letters Patent Appeal. By the said order, the learned single Bench has dismissed the writ petition filed by the appellant claiming service benefits at par with the employees of the State Government.

2. The appellants were engaged by Gandak Command



Area Development Agency (hereinafter referred to as the 'Agency'). The appellants sought direction to grant them and other employees of the Agency the pensionary benefits in light of the decision taken by Sone Command Area Development Authority on 07.02.1974 and that of the Executive Committee of the Agency in its meeting held on 29.06.1999.

3. The Agency was established under the Bihar Agricultural and Rural Area Development Agency Act, 1978 (hereinafter referred to as the 'Act'). The Section 39 of the Act contemplates that the Board of the Agency with the previous approval of the State Government shall make regulations not inconsistent with the Act or Rules framed there under. The regulation so framed provided for appointments, promotions and conditions of service of officers and servants of the Agency. The relevant provision of the Act reads as under:

39. Power to make regulations

(1) The Board may, with the previous approval of the State Government make regulations not inconsistent with the provisions of this act of the rules made there under, for carrying out its functions under this ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) procedure for conduct of business at the meetings

of the Board and the Executive Committee;
(b) Functions, powers and duties of officers and
servants of the Agency;
(c) appointments, promotions and conditions of service
of officers and servants of the Agency.”

4. In terms of the Act, Sone Command Area Development Authority (hereinafter referred to as the ‘Authority’) was set up as also the Agency in question. The Authority, in its meeting held on 07.02.1974, decided that service rules including the pension rules, as applicable to the employees of the State Government, would be applicable to the employees of the Authority or in respect of the employees of the Agency. In respect of the Agency, a decision was communicated on 10.08.1999 in pursuance of the meeting held on 29.06.1999 that till such time, the service conditions of the employees of the Agency are not approved by the State Government, the employees of the Agency shall be governed by the Rules or Regulations of the State Government.

5. It is thereafter, the Act/regulations were called Bihar Agricultural and Rural Area Development Agency Service Condition, Conduct, Discipline, Control and Appeal Regulation, 2010 (hereinafter referred to as the ‘Regulation’) were framed which has been published in the Bihar Government Gazette on 13.07.2011. The Regulation 49 of the said Regulations contemplates that the



appointments under the Agency shall be made by authorized officer in terms of the power conferred under the regulations. But all appointments, made prior to publication of the regulations, shall also be governed as per the service conditions now being notified. Regulation 132 of the Regulations contemplates that the employees of the Agency shall be governed by the Provident Fund –cum- Contributory Pension Scheme from the date of decision of the Board. Regulation 169 contemplates that these regulations will be applicable from the date the Board gives its approval.

6. As per learned counsel for the appellants, the approval has been granted on 19.12.2012. Therefore, said regulations would not be applicable in respect of service conditions of the appellants who were appointed prior to 19.12.2012. The argument is that such regulations have no retrospective effect. Therefore, the appellants, appointed prior to publication of the regulations, will not be governed by such regulations and would be governed as per the regulations of the State Government.

7. We do not find any merit in the said argument. The decision dated 10.08.1999, as communicated pursuant to decision of the Agency on 29.07.1999, is clear and categorical that the employees of the Agency will be governed by the Government Rules or Regulations till such time, the Government frames regulations for the

employees of the Agency. Therefore, the Rules and Regulations of the Government were applicable up to the date, when the State Government notified the regulations i.e. on 13.07.2011. Once the regulations have been framed, then the service conditions are governed by the said regulations. Regulation 49 contemplates that even the employees appointed prior to publication of the regulations would be governed by the regulations. Therefore, the employees engaged even prior to publication of the regulations and thereafter they will be governed in terms of the specific regulations contained in Regulation 49 of the Regulations, mentioned above.

8. In view thereof, we do not find any error in the order passed by the learned single Bench, which may warrant interference in the present Letters Patent Appeal. It is dismissed accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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