

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1895 of 2012

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1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
 2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
 3. The Engineer-In-Chief - cum - Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
 4. The Chief Engineer (Urban), Public Health Engineering Department, Government of Bihar, Patna. Respondents/Appellants.

.Versus

Abdus Samad Naiyar, S/o Md. Ali Ahmad Yusuf Zaie, R/o A-41/Police Colony, Anisabad, P.S.- Gardanibagh, District- Patna. writ petitioner/Respondent.

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Appearance :

For the Appellants : Mr. P. N. Shahi, Sr. Adv.
Mr. Mritunjay Kumar, Adv.
For the Respondent : Mr. Shashi Bhushan, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-03-2016

This Intra-Court appeal, under Clause-10 of the

Letters Patent of the Patna High Court, has been preferred by the State, being aggrieved and dissatisfied with the judgment and order dated 24.04.2012 passed by a learned Single Judge of this Court in C.W.J.C. No.16933 of 2011. The learned Single Judge allowed the writ application filed by the contesting respondent in this appeal and directed the State to count the past services of the writ petitioner/respondent rendered in the Bihar Hill Area Lift Irrigation Corporation Limited (for the sake of brevity 'BHALCO') as Government

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service.

2. The facts not being in dispute, with consent of both the parties, this appeal has been heard for final disposal at this stage itself.

3. The writ petitioner/respondent in this appeal had initially joined as Junior Engineer in BHALCO, a Government of Bihar undertaking and a Company incorporated under the provisions of the Companies Act. He had joined on 05.06.1980. Pursuant to advertisement issued by the Bihar Public Service Commission for recruitment of Junior Engineers (Civil), he applied and was selected for appointment in Government service. He was appointed vide notification dated 28.12.1988, as Junior Engineer (Civil) and, posted at Ranchi, after being relieved from BHALCO on 18.01.1989. He represented to the State Government to count his services rendered as Junior Engineer in BHALCO from 1980 to 1989 as Government service granting him continuity and other benefits, which having been rejected, the instant writ application was filed.

4. In the writ proceedings, the writ petitioner/respondent herein had urged that similarly one Sri Arun Prasad Gupta, who had come in State Government service



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from Bihar Pool Construction Corporation Limited, was granted similar benefits, he should also be granted the same.

5. In the writ proceedings, a counter affidavit was filed by the State taking a stand that, in view of the provisions of Rule-63 of the Bihar Service Code, a person who was not in employment in Government service or who had changed his service from any service under local fund, which was not administered by the Government to Government service, his service in the Government would be treated as first service and his previous service would not be accepted as work done under the Government. Accordingly, the stand of the State was that the writ petitioner/respondent's service in BHALCO cannot be counted as Government service and he cannot get benefit thereof. There was a supplementary counter affidavit also filed clearly stating that by Government order dated 29.03.2012, the benefit that had been granted to Sri Arun Prasad Gupta had been recalled.

6. The learned Single Judge, notwithstanding with the aforesaid facts, held that as benefits had been granted to Sri Arun Prasad Gupta, on parity of reasoning, the benefit had to be extended to the writ petitioner/respondent, notwithstanding the withdrawal of the same from the said Sri

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Arun Prasad Gupta.



7. Having considered the matter, in our view, the learned Single Judge was clearly in error. Unless there is any statute or rule having the force of law, which permits Non-Government service to be treated as Government service for any purpose, the Court or any authority cannot do so. In the case at hand, we have Rule-63 of the Bihar Service Code, which clearly evinces an intention to the contrary. Unless any Government order had clearly at the time petitioner's joining laid out clearly an implication that his services rendered earlier in any Corporation, not being services with the Government, would still be treated as Government service. The writ petitioner has no right to the same much less on grounds of parity with a person who was wrongly granted the same. No parity can be maintained with persons wrongly given any benefit and no Court can issue any direction for the same. That is well settled principle. The grant of the said privilege, wrongly granted to Sri Arun Prasad Gupta, cannot be construed as a special situation, as contemplated in the case of **Indu Shekhar Singh Vs. State of U.P.** since reported in **(2006) 8 Supreme Court Cases 129.**

8. In the facts aforesaid, we are clearly of the

opinion that the learned Single Judge erred in entertaining and allowing the writ application. The writ application ought to have been and is hereby dismissed. In the result, the appeal is allowed.

(Hemant Gupta, J.)

(Navaniti Prasad Singh, J.)

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