

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.69 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 12595 of 2010**

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1. The State of Bihar
 2. Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
 3. Chief Engineer, Water Resources Department, (Irrigation), Anisabad, Patna
 4. Superintendent Engineer, Punpun Flood Protection Circle, Anisabad, Patna
 5. Technical Advisor to Superintending Engineer, Punpun Flood Protection Circle, Anisabad, Patna

.... Respondents/ Appellants

Versus

Lalit Kishore Prasad S/O Late Krishna Kumar Prasad, Resident of Vaishnavi Umagiri Apartment, Flat No. 105, L.C.T. Ghat, Near Ganga Tower, Mainpura, Police Station- Patliputra, District- Patna

.... Petitioner/ Respondent

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Appearance :

For the Appellants : Mr. Kumar Priya Ranjan, SC 23
Mr. Mrityunjay Kumar, AC to SC 23
For the Respondent : Mr. Jitendra Prasad Singh, 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: 31-03-2016

The State is in appeal aggrieved by order passed by the learned Single Bench of this Court whereby the order dated 29th October, 2010 in respect of absorption and consequential benefits to the respondent was set aside.

Initially, the respondent was appointed in the Bihar State Construction Corporation (hereinafter referred to as 'the Corporation') and his services were regularized with effect from 01.07.1982. He was absorbed in the State Government with effect from 01.12.1989. The

respondent was reverted back to the Corporation vide order dated 19th September, 1995. Such order was challenged by the petitioner in CWJC No. 3498 of 1996. This Court set aside the order of repatriation vide judgment dated 16.05.1996. The operative part of the order reads as under:-

“Moreover, in the instant case, as I have already stated above, the learned Additional Advocate General No. III has not been able to show any rule, regulation or policy decision of the Government, which can be said to have been violated in absorption of the service of the petitioner in the Irrigation Department and it is also not disputed that the Chief Engineer was the competent authority to make such an appointment. As such, in my opinion, the impugned order cannot be sustained and it is accordingly quashed.

In the result, the writ application is allowed but without costs.”

Such order was challenged by the State in appeal but remained unsuccessful. Thereafter, an order was passed by the State Government on 29th October, 2010 and that the date of absorption in the State Government shall be treated as 01.12.1989. It also cancelled the first time bound promotion granted with effect from 24th November, 1992 and shifted the grant of ACP scale from 09.08.1999 to 01.12.2001. It is the said order which has been set aside by the learned Single Bench.

Once the respondent has been absorbed in the Corporation from 01.07.1982, the date of entry in Government service has rightly not reckoned as 01.12.1989 in view of the earlier order

passed in CWJC No. 3498 of 1996. Once the date of initial appointment is treated as 01.07.1982, consequential benefits of fixation of salary and payment under ACP Scheme could not be cancelled by the impugned order. Such order thus also becomes unsustainable.

In view thereof, we do not find any error in the order the learned Single Bench. This appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl./Anjani

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