

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1463 of 2013

IN

Civil Writ Jurisdiction Case No 6426 of 2012

Arti Kumari @ Nibha Wife Of Sri Chitranjan Pandey And D/O Late Sugandh Upadhyay Resident Of Mohalla - Hanuman Nagar, P.S. - Patrakar Nagar, District - Patna

.... Appellant/s

Versus

1. The Bihar School Examination Board, Through Its Chairman, Sinha Library Road, Patna - 17
2. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna - 17
3. The Deputy Secretary, Bihar Examination Board, Sinha Library Road, Patna 17

.... Respondent/s

Appearance :

For the Appellant/s : M/s Awadhesh Kr Mishra, Manoj Prabhakar, Ajay Kr, Johurendu Bhattacharya & Cap B S Mishra, Advs

For the Respondent/s : Mr Lalit Kishore, Sr Advocate with Ms Binita Singh & Piyush Lall, Advocates

**CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 29-03-2016

Delay in filing the appeal is condoned. IA No 8113 of 2013 stands disposed of.

2 This intra-Court appeal has been filed by the writ petitioner/appellant being aggrieved and dissatisfied with the judgment and order dated 29.07.2013 passed by the learned Single Judge of this Court in CWJC No 6426 of 2012, by which the claim of

the original writ petitioner for considering his service as a daily wager in between 03.05.1973 to 01.01.1981 to be taken into account for calculation of retiral benefits, has not been accepted. However, the learned Single Judge granted liberty to the writ petitioner/appellant to represent before the authorities if she has documents in support of her claim.

3 Learned counsel for the writ petitioner/appellant submits that the claim of the original writ petitioner was rejected by the Bihar School Examination Board (for brevity, *the Board*) for reckoning the period of service as between 03.05.1973 to 01.01.1981 for the purposes of calculating pensionary benefits solely on the ground that there were no records of service of the original writ petitioner available for that period and further that the said period was not even taken into account for reckoning his seniority upon his regularization with effect from 01.01.1981. Learned counsel for the writ petitioner/appellant raised several issues. In view of the facts and the order we propose to pass, it is not necessary for us to go into those issues.

4 Annexure 5 to the writ petition, by which the claim of the original writ petitioner was rejected by the Board, discloses the reason for not giving him benefit of the period 1973 to 1981 as allegedly there were no service records available with the Board. After the



disposal of the writ petition, the writ petitioner/appellant came to know that in another writ proceeding that is CWJC No 1267 of 2013 filed by one Manish Kumar Upadhyay, upon insistence of the Court, Board itself filed as Annexure A to its counter affidavit, a seniority list of daily wagers working regularly in the Board. This list itself shows, at serial No 63, the name of original writ petitioner and clearly states that the date of appointment was 03.05.1973. It is submitted that the stand of the Board in Annexure 5 to the writ petition is, thus, wrong. The record was available with the Board which the Board did not look into nor produced before this Court. It is further submitted that the Board itself, pursuant to direction of this Court, has treated the period served by seasonal workers, who were not regularly working throughout, for the purposes of pensionary benefits. Such order was passed by a learned Single Judge of this Court, affirmed by the Division Bench and not interfered with by the Apex Court. His case is much better, as original writ petitioner was regularly employed as a daily wager and continued to regularly work upto his regularization with effect from 01.01.1981. He further relies on the judgment of *Yashwant Hari Katakhar –Versus- Union of India & Others* since reported in (1996) 7 Supreme Court Cases 113 and, in particular, paragraph 3 thereof.

5 In fairness to learned counsel appearing for the Board, we

must notice his submission that as per the Bihar Pension Rules, the period served by the original writ petitioner as daily wager, cannot be reckoned for the purposes of grant of pensionary benefits. In support of his submission, he relied on the Full Bench judgment of this Court in the case of *State of Bihar & Another –Versus- Bhagwan Singh* since reported in 2014 (4) PLJR 229.

6 To the contrary, learned counsel for the writ petitioner/appellant submits that this was not a consideration for rejection of original writ petitioner's case rather the Board itself has granted pensionary benefits to even seasonal workers.

7 Having considered the matter, in our view, as liberty has already been granted by the learned Single Judge to represent before the Board, if writ petitioner/appellant is in possession of any paper or document in regard to her claim, it would be appropriate for the writ petitioner/appellant to make a detailed representation before the Board in this regard showing that the service records of the original writ petitioner was available, as noticed above and further that the Board itself has now recognized the services of seasonal workers for the purposes of pensionary benefits. It should not discriminate and deny benefits to an employee who has served for a long period on hyper technicalities.

8 We, accordingly, grant leave to the writ

petitioner/appellant to withdraw this appeal in order to enable her to make appropriate representation before the Chairman of the Board who would consider the same in accordance with law and pass appropriate orders preferably within a period of one month from the date representation is so filed.

9 With the leave aforesaid, this appeal stands disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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