

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.404 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 12380 of 2013**

Prabhat Chandra, Son of Late J. Chandra, Resident of 804, Gangotri Apartment,
Exhibition Road, P.S.- Gandhi Maidan, District- Patna

.... Appellant/s

Versus

1. The State of Bihar Through The Law Secretary-Cum-Legal, Remembrance,
Department Of Law, Government Of Bihar, Patna
2. The Chairman, Bihar Advocate Welfare Trustee Committee, Bar Council
Bhawan, Patna
3. The Secretary-Cum-Treasurer, Bihar Advocates, Welfare Trustee Committee Bar
Council Bhawan, Patna

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Advocate
For the State : Mr. Himanshu Kumar Akela
AC to PAAG 2

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Judge of this Court on 19th November, 2013 in CWJC No. 12380 of 2013, whereby the claim of the appellant for inclusion of Dearness Allowance (D.A.) in the matter of payment of gratuity remained unsuccessful.

The appellant was appointed as Secretary-cum-Treasurer, Bihar Advocates' Welfare Trustee Committee, constituted under the Bihar State Advocates' Welfare Act, 1983. The letter of appointment

of the appellant reads as under:-

“The Trustee Committee has appointed you as Secretary-cum-Treasurer of the Bihar Advocates Welfare Trustee Committee against permanent vacancy on the pay scale of Rs.1000-50-1700-EB-60-1820 plus D.A., House Rent, Medical, etc. as admissible to the employees of the State Government. You are requested to join the post at the earliest, latest by 1st July, 1986.’

The appellant attained the age of superannuation on 31st August, 2011. He has been paid a sum of Rs.5,85,920/- including gratuity amount of Rs.4,39,440/-. The assertion of the appellant is that the said amount of gratuity has been paid on the basis of basic salary without taking into account Dearness Allowance paid to the appellant before his superannuation.

We do not find any merit in the argument raised. Learned counsel for the appellant could not refer to any provision of the Statute or the Rules framed there under that the employees of the Trustee Committee are entitled to the same pay and allowances or the retiral benefits as are being paid to the State Government employees. The letter of appointment states that the appellant will get D.A., House Rent Allowance, Medical, etc. as admissible to the employees of the State Government. There is no condition in the letter of appointment that he will get retiral benefits as are being paid to the employees of the State Government. Thus only in the matter of pay and allowances, there can be parity with the employees of the State Government. The only Statute which

possibly could be referred to by the appellant is the Payment of Gratuity Act, 1972. But the Act would not have any application to the Bihar Advocates' Welfare Trustee Committee which is neither a shop nor establishment to which the said Act would apply. The said Act is not applicable to the establishment like Bihar Advocates' Welfare Trustee Committee. In absence of any statute, the appellant may not be entitled to the amount of gratuity as it was not a condition of appointment. Since the very payment of gratuity itself is doubtful, the question of payment of D.A. on such basic salary does not arise for consideration.

In view thereof, we do not find any merit in this appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.08.2016
Transmission Date	N.A.