

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1760 of 2012

IN

Civil Writ Jurisdiction Case No 4247 of 2012

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- 1 The State of Bihar through the Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna
 - 2 The Additional Commissioner, Finance Department, Government of Bihar, Patna
 - 3 The Commissioner, Saran Division, Saran, Chapra
 - 4 The District Magistrate –cum- Collector, Saran, Chapra
 - 5 The District Certificate Officer, Saran, Chapra

.... Appellant/s

Versus

- 1 Vinay Kishore Pandey, aged about 54 years, son of late Suresh Kumar Pandey, Resident of Mohalla Naya Tola, Police Line, Telpa, PS Chapra Town, District – Saran
- 2 Sant Prakash Srivastave, son of late Paras Nath Srivastava, Resident of Mohalla Prabhunath Nagar, PS Chapra (Mufassil), District Saran
- 3 Raj Balan Prasad, son of late Angnu Mahto, Resident of Village Husechhapra, PS Chapra Town, District Saran
- 4 Madan Singh, son of Sri Ram Kripal Singh, Resident of Village Kudarbagha, PS Garkha Bazar, District Saran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Anjani Kr Singh, AAG 6 with
Mr Sanjay Prasad, AC to AAG 6

For the Respondent/s : M/s Siyaram Shahi & Virendra Kr, Advocates

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CORAM: HON'BLE MR JUSTICE HEMANT GUPTA

&

HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE HEMANT GUPTA)

Date: 29-02-2016

The present Letters Patent Appeal is directed against an order passed by the learned Single Judge of this Court on 08.05.2012 whereby CWJC No 4247 of 2012 was allowed holding that the petitioners have been regularized vide order dated 10.10.2006, therefore, having acquired status of permanent Government

employees, they cannot be removed other than the manner prescribed.

2 Alongwith aforesaid writ petition, another writ petition being CWJC No 2812 of 2012 filed by three petitioners was also taken up for hearing wherein a direction was issued to the respondents therein (appellants herein) to carry out exercise to conduct an enquiry and pass appropriate orders within a period of three months from the date of receipt of a copy of that order.

3 The facts leading to the present Letters Patent Appeal are that the eight Muharrirs were appointed in the year, 1987-88 for a period of three months under Rule 57A of the Board Instructions issued under the Bihar and Orissa Public Demand Recovery Act. The appointments were made temporarily for a period of three months to expedite the disposal of certificate cases, as additional hands. Their services were extended from time to time.

4 Earlier, all the Muharrirs filed CWJC No 5142 of 1991 which was decided on 03rd of April, 2001 claiming regularization. The writ application was disposed of with a direction to the petitioners to submit a representation giving all factual details and the Collector, Saran was directed to consider the representation in accordance with law preferably within six months. Aggrieved against the directions, all the Muharrirs filed LPA No 434 of 2001. The said Letters Patent Appeal was dismissed on 28th of July, 2007. The relevant extract

from the order reads as under:

“We have gone through the order sheet of the Writ Court and could not notice any order passed by this Court staying the operation of the orders dated 03rd June 1991 and 19th June 1991. Under the circumstances, we are at a loss as to how despite those two orders, the appellants or any of them could continue to function as daily wage Muharrirs. Surprisingly, some of these daily wage Muharrirs have been regularized on 10th October 2006 by Annexure 3 to the supplementary affidavit. We are surprised as to how a person, in view of the said orders dated 03rd June 1991 and 19th June 1991 could remain functioning as daily wage Muharrirs until 10th October 2006 resulting in their absorption.

Having regard to the fact that nothing was urged before us suggesting that Writ Court while dispose the writ petition, erred either in law or on facts, the appeal preferred against the said order, being misconceived, is dismissed.

In the event, by reason of the decision dated 10th October 2006 reflected in Annexure 3 to the supplementary affidavit, referred to above, if any of the appellants' interest has been prejudiced, it shall be open to the appellants, as they may be advised, to take appropriate steps. We, however, direct the Vigilance Department of the State to go into the question as posed by us in the above judgment and to take appropriate steps in accordance with law.”

5 It may be mentioned that on 10th of October 2006, services of five Muharrirs including one Sugriva Singh were made permanent by the District Collector, Saran at Chapra in the meantime.

6 The Muharrirs filed Special Leave Petition against the order passed by the LPA Bench. The said SLPs No 27213 of 2008 and 17019 of 2009 were withdrawn on 13th of December, 2010. The

order passed by the Supreme Court reads as under:

“Both the Special Leave Petitions are dismissed as withdrawn. This Order will not preclude the Government to dispose of the pending representation.”

7 It may be mentioned that against the direction to conduct enquiry by Vigilance Department, State filed a Review Application which was declined on 09th of March, 2011.

8 Before an order was passed by the LPA Bench on 28th of July 2008, a Circular was issued by the Finance Department, Government of Bihar on 16th of April, 2008 to regularize the services of certain category of the officials and to dispense with the services of others. The Muharrirs herein claimed benefit of such Circular in the writ petitions filed by them. The learned Single Judge allowed the writ petition being CWJC No 4247 of 2012 filed by the remaining four Muharrirs whose services were regularized on 10.10.2006 whereas in respect of the other three, directions were issued to conduct an enquiry.

9 It is pointed out that in pursuance to the directions of the learned Single Judge dated 29.08.2011, the representation of the petitioners have been considered on 15th of January 2012. It has been noticed that Shri Sugriva Singh was not appointed as a Muharrir but as a Lower Division Clerk, therefore, his services could not have been regularized as Muharrir. In respect of others, it was said that the

services of Muharrirs have come to an end in terms of the Circular dated 16.04.2008, therefore, representation is declined.

10 Learned counsel for the appellants has vehemently argued that order passed by the Division Bench of this Court raising a question mark on the regularization of five of the Muharrirs vide order dated 10.10.2006 was not brought to the notice of the learned Single Judge in the order impugned in the present appeal. In view of the liberty granted to the Muharrirs to continue with their representation by the Supreme Court, which has since been declined, the five Muharrirs could not have been treated to be regularized. Therefore, neither four Muharrirs, the writ petitioners were regularized nor the other three are entitled to be considered for regularization. Their representation having been declined, therefore, the order passed by the learned Single Judge is in fact run counter to the observation of the Division Bench.

11 On behalf of respondents, the writ petitioners, it is argued that once an order of regularization was passed on 10.10.2006, there could not be any deemed setting aside of the said order. Such order continued to be in operation and, thus, the writ petitioners/respondents would continue to be permanent regular employee. Therefore, there is no error in the direction issued by the learned Single Judge.

12 We have heard learned counsel for the parties and find

that the order passed by the learned Single Judge is not sustainable in law. The order passed in LPA No 434 of 2001 dated 28th of July, 2008 was not brought to the notice of the learned Single Judge. It is further contended that even if the order dated 10.10.2006 was not set aside, the fact remains that such order of regularization could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status could be conferred to those who were in service and not to those whose services had come to an end many years ago. Such an order could not be made basis of permanent status through the Writ Court. Such order dated 10.10.2006 is not enforceable in law. The representation having been declined in the light of the Circular dated 16.04.2008, we do not find that the writ petitioners were entitled to any direction to treat them as regular employees.

13 In view of the above, the order passed by the learned Single Judge is set aside. The Letters Patent Appeal is allowed. The writ application is dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

M.E.H./-
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