

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.411 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 14496 of 2011**

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Savitri Devi, Widow of Late Jitendra Prasad, Resident of Village and Post Office Agarsanda Behra, P.S. Ara Mufassil, District Bhojpur (Ara).

.... Appellant

Versus

1. The State of Bihar through the Secretary to Government, Road Construction Department, Visheswariya Bhavan, Bailey Road, Patna.
2. The Engineer-in-Chief, Road Construction Department, Bihar, Visheswariya Bhawan, Bailey Road, Patna.
3. The Chief Engineer, National Highway Wing, R.C.D. Bihar, Bailey Road, Patna.
4. The Superintending Engineer, national Highway Works Circle, R.C.D., Bihar, Bailey Road, Patna.
5. The Deputy Secretary to Government, R.C.D., Bihar, Visheswaya Bhawan, Bailey Road, Patna.
6. The Executive Engineer, N.H. Works Division, Gulzarbagh, Patna.
7. That Accountant General (A&E), Bihar, Patel Marg, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Girish Nandan Prasad Singh, Advocate.
For the State : Mr. Avinash Kumar, S.C. 30
For the A.G. : Mr. Madhuresh Prasad, 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: 12-05-2016

Re.:I.A. No. 1953 of 2015

The application is for condonation of delay of 66 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 66 days in filing the present

Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 1953 of 2015 is allowed and delay of 66 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 411 of 2015

The challenge in the present Letters Patent Appeal is to an order dated 17th of October, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 14496 of 2011, whereby the claim of the appellant for pension after the death of her husband Jitendra Prasad remained unsuccessful.

2. Mr. Jitendra Prasad, husband of the appellant was appointed as Temporary Tracer in the pay-scale of Rs. 100-130/- by the Superintending Engineer, National Highway Circle, Arrah vide office order dated 17th of December, 1971. He joined on 29th of December, 1971. The services of husband of the appellant was confirmed on 12th of April, 1978 on the permanent post of Tracer in the office of National Highway Circle, Patna by the Superintending Engineer vide his office order dated 5th of December, 1979.

3. As per the appellant, her husband was posted as Toll Clerk on 8th of September, 1980 in the National Highway Division, Araria by the Chief Engineer, National Highways Wing, Bihar, Patna. He continued to work against the post of Toll Clerk till his death on

17th of December, 2002. It is thereafter, the appellant sought retiral benefits including benefits of Group Insurance, encashment of unutilized leave etc. and family pension. The appellant also sought compassionate appointment for her son Santosh Kumar.

4. An earlier writ application filed by the appellant bearing C.W.J.C. No. 7303 of 2006 was decided on 15th of May, 2006 with a direction to the respondents to consider the claim of the appellant and to give reasons if the claim is not to be accepted. It is thereafter, the claim of the petitioner was rejected on 10th of January, 2011, which order was impugned in the writ application and now is subject matter in the present appeal.

5. In the counter affidavit to the writ application, the stand of the respondents is that husband of the appellant worked as Tracer from 23rd of November, 1971 to 25th of September, 1980 under Regular Establishment. Thereafter, he was freshly appointed as Toll Clerk by the Superintending Engineer, National Highway Circle, Patna vide office order dated 8th of September, 1980. The stand of the respondents is that the husband of the appellant worked in the Work Charge Establishment as Toll Clerk till his death, therefore, he is not eligible for pension as he has not completed 10 years of service in the Regular Establishment.

6. In an additional counter affidavit filed in the Letters

Patent Appeal, the respondents have attached the office order of posting of the husband of the appellant in the National Highway Circle, Patna by the office of the Superintending Engineer, National Highway Circle.

7. We have heard learned counsel for the parties and find that the action of the respondents denying the pensionary benefits is unjustified and illegal.

8. Husband of the appellant was working in the Regular Establishment till 25th of September, 1980 when he was posted by the Chief Engineer of the same Circle in which, the husband of the appellant was working, as a Toll Clerk. Thus, it is a case of posting of the husband of the appellant rather than change of employer. It was the same department for which the deceased continued to work till his death. The nature of establishment would not be detrimental to the interest of the husband of the appellant as he had no option but to work at a post to which he is posted. Merely because Establishment where he was posted was a Work Charge Establishment, will not change the status of the husband of the appellant who was earlier appointed on Regular Establishment as a Tracer. It is a case of posting and not a fresh appointment, as alleged in the counter affidavit filed by the respondents. If the husband of the appellant was regularly appointed Tracer, appellant cannot be denied the benefit of family

pension because at the time of death husband of the appellant was working as Toll Clerk in the Work Charge Establishment. The nature of employment will not be changed on mere posting against the Work Charge Establishment.

9. Consequently, the order passed by the learned Single Bench is set aside and the present Letters Patent Appeal is allowed. Respondents are directed to compute the retiral benefits including family pension, Leave Encashment etc. Such payments be made to the appellant within a period of three months from today.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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