

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 977 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 20786 of 2012

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Babita Devi wife of late Harendra Prasad, Resident of village - Manjhagarh, P.O. Manjhagarh, P.S. Manjhagarh, District – Gopalganj.

....Petitioner/s / Appellant/s

Versus

1. The State of Bihar.
2. General Administration, Government of Bihar, Patna.
3. The Principal Secretary Road Construction Department Bihar, Patna.
4. The Engineer-in-Chief, Road Construction Department Bailey Road, Patna.
5. The Chief Engineer, National Highway, Sub-Part, Road Construction Department Bailey Road, Patna.
6. The Superintending Engineer, National Highway Circle, Muzaffarpur.
7. Sub-Divisional Officer, N.H. Sub - Division No.2, Motihari, East Champaran.
8. The Executive Engineer, National Highway Division, Motihari, East Champaran.

....Respondent/s / Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar No. III, Advocate

For the State : Ms. Alka Verma, A.C. to S.C. 17

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-10-2016

Heard learned counsel for the parties.

2. Challenge in the present intra Court appeal is to the order dated 19.02.2014 by which C.W.J.C. No. 20786 of 2012 filed by the appellant has been dismissed.

3. The late husband of the appellant who was a daily wage Chowkidar under the National Highway Division, Muzaffarpur was appointed as in-charge Chowkidar on ad hoc



basis under the Work Charge Establishment by order dated 25.01.1986 of the Superintending Engineer, National Highway Circle, Muzaffarpur and joined on the post on 27.01.1986. He died in harness on 12.03.2006. Pursuant thereto, the appellant filed representation on 20.09.2010 before the Executive Engineer, National Highway Division, Motihari for payment of admissible dues and appointment on compassionate ground. The appellant thereafter filed C.W.J.C. No. 20786 of 2012 seeking regularization of the service of her late husband with effect from 27.01.1986 and payment of death-cum-retiral benefits to her. Dismissal of the writ petition by the learned single Bench by order dated 19.02.2014 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the service of the late husband of the appellant was fit to be regularized as in terms of his appointment dated 25.01.1986 his service book was also opened on 12.04.1988 and he was also getting revised pay scale from time to time. It was further submitted that even as per the Government resolution dated 23.10.1987, the service of work charge employees were made at par with permanent employees but still benefit was not given to the appellant. Though such issue was neither raised before the authorities nor the learned Single Bench, but, before this Court it



is contended that as per the policy decision of the State Government dated 17.01.1990, it was decided that all Chowkidars/Dafadars in service would be treated as Government Servant with effect from 01.01.1990 and, thus, the late husband of the appellant also being a Chowkidar, it shall be deemed that he also became government servant and, thus, all benefits, as admissible to a Government servant, would be applicable in the case of the appellant also.

5. Learned counsel for the State, on the basis of counter affidavit filed in the writ proceeding, submitted that the Circular of the Finance Department referred by learned counsel for the appellant as contained in Letter No. 6394 dated 23.10.1987 provided that work charge employees of Works Department who had completed 5 years of regular and satisfactory service on the post till 21.10.1984, shall be adjusted in regular establishment and the late husband of the appellant having been appointed much after the cut off date, his service could not be adjusted in the regular establishment. It was submitted that the due and admissible payment to a work charge employee on account of G.P.F. and Group Insurance scheme has already been paid to the appellant. It was further submitted that subsequently, the Government in the letter of the Personnel and Administrative



Reforms Department bearing no. 3647 dated 30.04.2005 has provided for appointment on compassionate ground of dependants of those employees whose service has been adjusted in the regular establishment from work charge establishment and on this account also the appellant is unsuited.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The late husband of the appellant, though working as a Chowkidar is not covered under the policy decision of the State Government dated 23.10.1987 which applied only to such work charge employees who had completed five years of regular and satisfactory service on the post till 21.10.1984. Similarly, the benefit of compassionate appointment was also extended to those employees whose service has been adjusted in the regular establishment from the work charge establishment, which also is not a fact in the present case. The argument of learned counsel for the appellant that under the policy of the State Government a Chowkidar became Government Servant with effect from 01.01.1990 is totally misconceived and is being noted only for the purposes of it being rejected. Such policy decision of the State Government is only to such Chowkidars who were attached to the local police station having been appointed by the District Magistrate of the concerned District. Just because the



name of the post is Chowkidar, will not mean that every Chowkidar under any Department of the State Government would be covered by such policy decision.

7. In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal, which, accordingly, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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