

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9071 of 2014

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1. Prabhakar Mishra, Son of Late Kedar Nath Mishra, Resident of Village Gaura L, Police Station Teghra, District Begusarai.
 2. Md. Ahad Raja, Son of Late Hasan Raja, Resident of Village Pokharia Begusarai, Police Station and Town Begusarai, District Begusarai.
 3. Navin Kumar Roy, Son of Late Rama Nand Roy, Resident of Village Kalyanpur Basti, Police Station Mohiyuddin Nagar, District Samastipur.

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Department of Animal Husbandry and Fisheries, Patna
2. The Principal Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna
3. The Director, Animal Husbandry and Fisheries, Government of Bihar, Patna
4. The Director, District Animal Husbandry and Fisheries, Samastipur
5. The Director, District Animal Husbandry and Fisheries, Purnia
6. The Regional Director, Animal Husbandry, North Bihar Range, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Anil Singh, Advocate
For the State	:	Mr. Shyam Kishore Sharma, GA1

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 24-11-2016

Petitioner no.3 is dead. A substitution petition being I.A. No.8816 of 2016 has been filed. The name of legal heirs are on record in paragraph-1 of the substitution petition. It is allowed. Let the names of the legal heirs be placed at the place of the erstwhile petitioner no.3.

2. I.A. No.8817 of 2016 has been filed for additional prayer and amendment to the main writ application for grant of benefit of 3rd MACP and also for quashing Annexure-16 by virtue of which the service of the petitioner have been counted from 19.03.1986 and not the initial date of appointment in the Dairy Corporation.



3. Annexure-3 is the notification issued by the Department of Animal Husbandry, Government of Bihar where name of all such employees of the erstwhile Dairy Development Corporation, figures. These petitioners are very much there in the list. A reading of Annexure-3 also gives the background under which these employees had to be accommodated by absorption (समायोजन) since the Dairy Development Corporation had closed down. The case of these petitioners is that continuity of service has to be provided. There is a legal basis for demanding such a privilege since it is supported by law, as laid down in the case of *Priya Ranjan Sharma v. The State of Bihar & Ors.*, 2010 (2) *PLJR* 387 specially paragraph-8 and 9 of the said decision.

4. To make things worse for these petitioners, the respondent authorities have further discriminated from a similarly situated employee, namely, Sri Ram Bilash Thakur whose previous date of appointment in the Dairy Development Corporation has been treated as to be the date of such appointment for grant of benefit of 3rd MACP. Earlier Sri Ram Bilash Thakur was denied this benefit, therefore, he was compelled to approach the High Court by filing CWJC No.22355 of 2012. The learned Single Judge on 11.12.2012, a copy of which is Annexure-14, did give a direction for consideration of grant of 3rd ACP/MACP treating the initial appointment in the Dairy Development Corporation as the date from where the initial date of service has to be calculated.

5. Counsel for the State puts up a very valiant fight. He culls out one word from Annexure-3 and that word is नियुक्ति (appointment). It is his case that these persons were newly appointed therefore only from that date the calculation of length of service has been done. It is not a case of absorption.

6. If the State authorities were as precise as the counsel for the State while issuing the notification contained in Annexure-3, this Court would have had no quarrel with the submission of the State counsel but when the Court starts reading the notification from the very first line, keeping in mind the background under which such appointment or absorption had been made, the word 'समायोजन' too has been used in that notification.

7. A notification has to be read in its entirety. It cannot be read and interpreted in a dissected manner or truncated manner. The essence of the notification contained in Annexure-3 dated 07.03.1986 is that employees whose names figure in the list of that notification were erstwhile employees of Dairy Development Corporation. Because the Corporation closed down, the State decided to absorb such employees in the Department of Animal Husbandry. In the given facts, therefore, the previous service cannot be wished away. It was a case of absorption and merely because the word 'नियुक्ति' has been used in one part of the notification, it is not a case of fresh appointment because if that interpretation is accepted then the background to the appointment of the

petitioners will vanish.

8. Keeping in mind a similar order passed in Annexure-14 by a learned Single Judge and for the facts and the law indicated in the order as above, the petitioners succeed. They will be entitled to the benefit of 3rd MACP calculating the length of service from the initial date of engagement or appointment in the erstwhile Dairy Development Corporation.

9. Writ succeeds. Respondents are directed to extend the benefit to the petitioners which include the legal heirs of petitioner no.3 within a period of four months from the date of production of a copy of this order.

10. Writ application stands allowed.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.11.2016
Transmission Date	