

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 607 of 2012

IN

Civil Writ Jurisdiction Case No 16448 of 2011

- =====
1. The State Of Bihar Through The Commissioner-Cum-Secretary Public Health Engineering Department, Government Of Bihar, Patna
 2. The Engineer-In-Chief Public Health Engineering Department, Government Of Bihar, Patna
 3. The Chief Engineer, Public Health Engineering Department, Government Of Bihar, Patna
 4. The Superintending Engineer, Public Health Engineering Mechanical Circle, Muzaffarpur
 5. The Executive Engineer, Public Health Mechanical Division, Muzaffarpur

.... Appellant/s

Versus

Bishwa Ranjan S/O Late Rajeshwar Tanti R/O Village- Tuniyahi, P.O.- Purikh (Purushottampur), P.S.- Bihra, District- Saharsa

.... Respondent/s

WITH

Letters Patent Appeal No 409 of 2012

IN

Civil Writ Jurisdiction Case No 7178 of 2010

- =====
1. The State Of Bihar Through The Commissioner-Cum-Secretary Department Of Personnel And Administrative Reforms, Government Of Bihar, Patna
 2. The Commissioner-Cum-Secretary Public Health Engineering Department, Government of Bihar, Patna
 3. The Engineer-In-Chief Public Health Engineering Department, Government of Bihar, Patna
 4. The Chief Engineer, Public Health Engineering Department, Government of Bihar, Patna
 5. The Superintending Engineer, Public Health Engineering Department, Government Of Bihar, Patna
 6. The Executive Engineer, Public Health Division, Munger
 7. The Sub Divisional Officer, Public Health Division, Kharagpur, Munger
 8. The Executive Engineer, Public Health, Water Supply Division, Jamui
 9. The Sub Divisional Officer, Public Health Division, Kharagpur, Munger

.... Appellant/s

Versus

Ram Krishna Tanti S/O Late Rajeshwar Tanti R/O Village- Tuniyahi, P.O.- Purikh (Purushottampur), P.S.- Bihra, District- Saharsa

.... Respondent/s

WITH

Letters Patent Appeal No 624 of 2012

IN

Civil Writ Jurisdiction Case No 15870 of 2011

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1. The State Of Bihar through the Commissioner-Cum-Secretary, Public Health Engineering Department, Govt. Of Bihar, Patna
2. The Engineer-In-Chief-Cum-Special Secretary, Public Health Engineering Department, Govt. Of Bihar, Patna
3. The Chief Engineer, Public Health Engineering Department, Govt. Of Bihar, Patna
4. The Superintending Engineer, Public Health Engineering , Mechanical Circle, Muzaffarpur, Bihar
5. The Executive Engineer, Public Health Engineering Mechanical Division, Muzaffarpur, Bihar

.... Appellant/s

Versus

Pradip Sah Son Of Late Janak Sah Resident Of Village - Phulwaria, P.S.- Maniari, District- Muzaffarpur

.... Respondent/s

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For the Appellant/s : Mr Pushkar Narayan Shahi, AAG VI with
Mr S K Singh, AC to AAG VI
Mr Firoz Ahmad, AC to AAG XII

For the Respondent/s : Mr Shiv Kumar, Ms Shashi Priya Pathak &
Mr Ambrish Kr Jha, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 20-10-2016

All the three Letters Patent Appeals are directed against the order of the learned Single Judge whereby learned Single Judge has held that consequent to their regularization in the work-charge-establishment, benefit of past services rendered in the work-charge-establishment, would be given to them. State, being aggrieved by the said decision, has filed these intra-Court appeals. While admitting these appeals, there was an ad interim stay of the judgment and order



of the learned Single Judge. Interlocutory applications have been filed for vacating the stay on behalf of respondents, who were the writ petitioners. We have heard learned counsel for the State and learned counsel for the private respondents and, with their consent, instead of dealing with the interlocutory applications, we are disposing of these appeals on merits.

2 It is not in dispute that the writ petitioners, who are respondents in these appeals, were working in the work-charge-establishment since long. There were several rounds of litigations and ultimately on or about 30.11.2006, they were absorbed and regularized in service. A writ petition was filed by large number of such regularized employees (Annexure 7 to the writ petition) wherein, upon denial of applicability of GPF Scheme to them and forcing them to join the new CPF Scheme, this Court held that they were all in continuing service from before and were only regularized in the year, 2006. Therefore, being in the Government service from before, they cannot be taken to be new employees. Accordingly, the CPF Scheme was not applicable to them. When it came to these writ petitioners/respondents in the appeal, again similar disputes were raised including denial of counting of earlier period for the purposes of ACP, seniority and pay scale. Upon the writ petition being filed, the same was allowed following the judgment of this Court by another



Single Judge being *CWJC No 7178 of 2010* disposed of on 02.02.2011 (Ram Krishna Tanti –Versus- State of Bihar & Others). The writ petitioners also submitted that identically situated co-employees have been given all the benefits but merely because petitioners chose to litigate, they are being denied this benefit. Specific employees have been named. There is no rebuttal from the State.

3 On behalf of the State, it is submitted that there was a ban in recruitment of employees in the work-charge-establishment and, as such, their prior services cannot be looked into. We fail to appreciate this submission. Firstly, the ban, which was initially placed in the year 1978, the cut off date was shifted from time to time and ultimately it was brought to 1990 that is after 1990, there would be no recruitment. It is not the case of the State that the writ petitioners were recruited after 1990 rather the writ petitioners' case, which remains unrebutted, is that they were recruited on daily wages in 1980 and in work-charge-establishment in 1988. By Government order, they were regularized in service in the year 2006. These being the facts, we fail to appreciate how and why their past services cannot be looked into. Our attention has also been drawn to the Bihar State Employees Conditions of Service ("Assured Career Progression Scheme") Rules, 2003 wherein there is specific provision under Rule 4, Explanation 3 (ii a) which clearly predicates that the tenure of

service as work-charge-establishment shall be counted for ACP, for employees who have been regularized from work-charge-establishment. Petitioners’ case clearly falls within that. Thus, if the writ petitioners are considered as continuing employees for the purposes of GPF, ACP, they had been receiving remuneration from the State prior to their regularization, we are of the view that the learned Single Judge did not err in allowing the writ petition in the terms as was done.

4 We, thus, find no merit in the appeal. It is, accordingly, dismissed.

5 The stay, granted earlier, stands vacated.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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