

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.668 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5630 of 2014**

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1. Kumod Kumar Jha, Son of Shri Mahendra Jha, Resident of Village - Muradpur, P.O. Bishanpur, P.S. - Parbatta, District - Khagaria
 2. Niranjana Thakur, Son of Shri Ram Narayan Thakur, Resident of Village and P.O. Chainpur, P.S. Bangaon, District Saharsa
 3. Binod Kumar Mishra, Son of Sri Shobha Kant Mishra, Resident of Village and P.O. Telhar, P.S. Mahishi, District - Saharsa
 4. Anil Kumar Jha, Son of Shri Sahdeo Jha, Resident of Village and P.O. Parri, P.S. Bangaon, District - Saharsa
 5. Manoj Kumar Thakur, Son of Sri Ram Narayan Thakur, Resident of Village and P.O. Chainpur, P.S. - Bangaon, District - Saharsa
 6. Praveen Kumar Jha, Son of Sri Jainarain Jha, Resident of Village and P.O. Kahra P.S. and District - Saharsa
 7. Uma Shankar Jha, Son of Sri Mukti Nath Jha, Resident of Village and P.O. Kahra, P.S. and District - Saharsa
 8. Shyamal Kishore Jha, Son of Lae Chandra Shekhar Jha, Resident of Village and P.O. Kahra, P.S. and District - Saharsa
 9. Ashok Kant Pathak, Son of Sri Ashok Kant Pathak, Resident of Village - Guari, P.O. Nanauti, P.S. Basnahi, District - Saharsa

.... Appellant/s

Versus

1. The State of Bihar
2. The District, Agriculture, Bihar, Patna
3. The Joint Director, Agriculture, Koshi Division, Saharsa
4. The District Magistrate, Saharsa
5. The District Agriculture Officer, Saharsa
6. The Sub-Divisional Agriculture Officer-Cum-Deputy Agriculture Director General, Saharsa
7. Manoj Kumar Srivastava, Son of Sri Jamuna Prasad, Resident of Village - Nariyar, P.S. and District - Saharsa
8. Jai Prakash Jha, Son of Sri Jagdish Jha, Resident of Village and P.O. - Telhar

P.S. Mahishi, District - Saharsa

9. Badyanath Paswan, Son of Late Domi Paswan, Resident of Village + P.O. Manowar, P.S. Mahishi, District - Saharsa

10. Awadh Lal Shah, Son of Sri Thithar Sah, Resident of Village Dhanoga, P.O. - Ghoghsam, P.S. - Chaprm Kothi, District - Saharsa

11. Shatrudhan Chaudhary, Son of Shri Dukha Choudhary, Resident of Village and P.O. - Bengha, Ward No. 4, P.S. and District - Saharsa

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund, Advocate.

Mr. Anirudh Pandey, Advocate.

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-08-2016

Heard learned counsel for the parties.

2. The order dated 12th of November, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 5630 of 2014 is subject matter of challenge in the present Letters Patent Appeal.

3. The appellants claimed to have worked on daily wage basis from the year 1986 to 1990 for a period of 240 days in each year, therefore, they claim that they are entitled to be regularization at par with 52 daily wage employees who have been regularized on 13th of August, 2008 in pursuance of an order dated 5th of November, 2007 passed by this Court in C.W.J.C. No. 10151 of

2007 and other analogous cases.

4. The stand of the respondents in the counter affidavit is that the appellants have not worked even for a day in the office of Respondent No. 6 or even in the office of Sub-Divisional Agriculture Officer, Saharsa as no such record is available.

5. The learned counsel for the appellants has raised the following arguments:-

- (i) That the counsel for the appellants was not heard when the order was passed by the learned Single Bench on 12th of November, 2014. Therefore, the order passed by the learned Single Bench is vitiated.
- (ii). The claim of the appellants are not stale as the right to sue arose in the year 2011 in pursuance of the Resolution No. 839 of the Personnel Department dated 16th of March, 2006.

6. We have heard learned counsel for the appellants and find no merit in the present Letters Patent Appeal.

7. As per the appellants, Sri Anil Kumar Mukund filed appearance on 12th of November, 2014 after obtaining No Objection Certificate from the Advocate on Record and that request was made to adjourn the case which was not acceded to.

8. The appellants were represented by a counsel who was present at the time of hearing as well. Once the advocate is represented, it is the duty of such advocate to make arrangements even if he wishes to withdraw from the case.

9. In terms of Order III, Rule 4, every appointment of an Advocate is deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court. Therefore, mere fact that another counsel has put in appearance in the office on the date of hearing of the matter is not a ground which warrants that the Court must have adjourned the matter.

10. The best case of the appellants is that they worked for 240 days in each year in the years 1986 to 1990. The writ application was filed in the year 2014 i.e. more than 24 years later. The Writ Court is meant for the litigants who are vigilant and not who sleep over their right. Firstly, mere completion of 240 days does not confer any cause of action to seek regularization as on completion of 240 days the only right accrues to the employee, if it is governed by the Industrial Disputes Act, 1947, is to seek reference in terms of the provisions of the Industrial Disputes Act, 1947. Still further, the stand of the respondents is that there is no record to show that the appellants have worked in the office of Respondent No. 6. On the basis of such

averment in the counter affidavit, to which no counter was filed, the learned Single Bench was perfectly justified in law in dismissing the writ application on the ground of delay and laches.

11. We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

12. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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