

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3300 of 2017

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Madhusudan Mishra Son of late Badri Nath Mishra, resident of village-
Ganga Sagar, P.S.- Laheria Sarai, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Chief Engineer (North), Building Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Building Construction Department, Building Division, Sitamarhi.
4. The Executive-Engineer, Building Construction Department, Building Division Sitamarhi.
5. The Accountant General (A & E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate
For the Respondent/s : Mr. M.K. Ambastha- SC-26
Mr. T. N. Ambastha, AC to SC 26
Mr. Raghwanand, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER**

2 21-07-2017 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has earlier approached this Court for a direction to the respondents to consider his case for regularisation. The writ application was dismissed. The matter was taken to the L.P.A. Court, which was also dismissed. The decision with regard to claim of regularisation has attained finality. Now the petitioner has filed this application for a direction that he has worked upto 31.03.2004 on the post of Mistri Grade-I in the work charge



establishment and a Bench of this Court has considered the case of similarly situated work charge employees and has directed to pay retiral dues.

Learned counsel for the petitioner has relied upon Annexure-10 to this application, which is a judgment of this Court passed in C.W.J.C. No. 10897 of 2016.

The State is a modal employer and as such is obliged to treat its all employees working or retired on same footing. In case, the State fails to act uniformly, it is the solemn duty of the Constitutional Court to remind the authorities to act without discrimination and on uniform basis.

In the case of R.D. Shethi vs. International Airport Authority, AIR 1979 SC 1628, it has been held out that the State cannot act arbitrarily even in the matter of distribution of largess and bounty. If similarly circumstance, other work charge employees are getting pension, the respondents are required to consider the case of the petitioner. The Constitution bench of the apex Court in the case of E. P. Royappa vs. State of Tamilnadu, AIR 1974 S.C. 555, held out that arbitrariness and equality are sworn enemy.

Justice Mathews has explained the new doctrine of equality in the case of Bennett Coleman case, (1972) 2 SCC 789,



which is quoted below:-

“The crucial question today, as regards Article 14, is whether the command implicit in it constitutes merely a ban on the creation of inequalities by the State, or, a command, as well, to eliminate inequalities existing without any contribution thereto by State action. The answer to this question, has already been given in the United States under the equal protection clause in the two cases referred to, in certain areas. The U.S. Supreme Court, in effect, has begun to required the State to adopt a standard which take into account the differing economic and social conditions of its citizens, whenever those differences stand in the way of equal access to the exercise of their basis rights. It has been said that justice is the effort of man to mitigate the inequality of men. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality. The only norm which the Constitution furnishes for distribution of the material resources of the community is the elastic norm of the common good..”



In view of the above respondents are directed to take final decision in this matter and extend similar treatment to the petitioner if similarly circumstance, other work charge employees are getting pension.

With the above observation this application is disposed of.

(Anil Kumar Upadhyay, J)

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