

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1011 of 2016

In
Civil Writ Jurisdiction Case No.2306 of 2015

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Meena Kuer wife of late Ram Bilash Singh resident of village - Rewatit Hakam, P.O. Majhali Patti Hakam, Police Station - Mahmmadpur, District - Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, 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 Circle, Saran Circle, Chapra.
5. The District Magistrate, Siwan.
6. The Executive Engineer, Public Health Engineering Division, Siwan.
7. The Sub Divisional Officer, Public Health Engineering, Sub Division, Siwan.
8. The Junior Engineer, Public Health Engineering Branch, Siwan.
9. The District Treasury Officer, Siwan.
10. The District Provident Fund Officer, Siwan.
11. The Accountant General, Bihar, Beerchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Mishra
For the Respondent/s : Mr. Rakesh Kr. Shrivastava, AC to GP 15

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 23-11-2017

Even though we are not convinced with the reason assigned for delay of 316 days, however, in the interest of justice and the litigant, I. A. No.3649 of 2016, which is a petition for condonation, is allowed and the delay is condoned.



The matter is thereafter taken up on merits.

Appeal has been preferred against the order dated 05.02.2015 passed by the learned Single Judge wherein the learned Single Judge refused to give a categorical direction to treat the husband of the present petitioner to be on regular employment and, therefore, grant benefit of post retiral dues of the late employee as well as pension etc. to the present appellant.

No doubt, a window of opportunity was given to the present appellant on a limited issue for filing representation for payment of gratuity and leave encashment but instead of availing that opportunity, the appellant has preferred the present appeal.

This Court has difficulty in interfering with the order of the learned Single Judge dated 05.02.2015 for the simple reason that a Division Bench of this Court has clearly laid down the law with regard to entitlement of work charge employees being extended benefit of pension under the Bihar Pension Rules. After considering various facets and decisions rendered earlier, the Division Bench in the case of *State of Bihar and others v. Bimli Devi, reported in 2016 (1) PLJR 452*, has clearly held that work charge employees are not entitled to pension or family pension unless they acquire the status of permanency by regularization. The law is unambiguous and since the decision of the learned



Single Judge is within the parameters of the said decision of Division Bench, as a principle the Court has difficulty in interfering with the decision.

Counsel for the appellant draws the attention of this Court to yet another decision of the Division Bench, which is case of ***Saraswati Devi v. the State of Bihar and others, reported in 2017 (3) PLJR 645.*** This is another decision of the Division Bench where the Division Bench seems to have got carried away by the factum that an employee has worked in the capacity of work charge for more than 20 years and, therefore, keeping in mind the long period of work and a PWD Department's Memo No.1344, dated 04.02.1949, a direction was given in favour of the said employee. The submission of the counsel for the appellant is that since there are two Division Bench seems to be in conflict, the matter does require a deeper look.

We are not persuaded by such a submission for the reason that the case of ***Saraswati Devi (supra)*** prima facie seems to be per incurium for the reason that while dealing with the issue of grant of pension or family pension to a work charge employee, the status of a work charge employee laid down by the Full Bench of this Court reported in ***2007 (4) PLJR 259 (Durganand Jha and others v. the State of Bihar and others)*** and even a decision of the



Hon’ble Apex Court reported in *(2008) 2 SCC 310 (Uttar Haryana Bijli Vitran Nigam Ltd. and others v. Surji Devi)* were not taken into consideration. Since the Full Bench decision of the High Court still occupies the field and the same has not been interfered or modified or explained in any other decision, with due respect, the decision in the case of *Saraswati Devi* does not lay down the correct law.

In view of the above legal position and facts, the appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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