

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1541 of 2013
IN
Civil Writ Jurisdiction Case No. 12061 of 2008**

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Kameshwar Yadav, son of Late Kali Yadav, resident of village- Deguna, P.O.-
Laxmipur, P.S.- Tekari, District- Gaya

.... Appellant/s

Versus

1. The Bihar State Electricity Board, through its Secretary, Vidyut Bhawan, Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Deputy Director of Personnel, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. The General Manager-Cum-Chief Engineer, Gaya Area Electric Supply Board, Gaya
6. The Electrical Superintending Engineer, Gaya Electric Supply Anchal- Gaya, Gaya
7. The Electrical Engineer, Electric Supply Division, Gaya
8. The Electric Assistant Engineer, Electric Division No.- 2, District- Gaya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prem Kumar Jha, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 09-03-2017

The appellant filed a writ application, namely, CWJC



No. 12061 of 2008. In the writ application quashing of office order No. 330 dated 30th of January, 2006 was prayed for, by virtue of which payment of salary for the period 01.02.2001 to 30th of January, 2006 was refused by the respondent erstwhile Bihar State Electricity Board applying the principles of “*no work no pay*”. The prayer of the appellant was refused and the writ application was dismissed and therefore, the present appeal.

This is not the first round of litigation relating to the age and date of superannuation of the appellant who admittedly was an employee of the erstwhile Bihar State Electricity Board. At one point of time, since the appellant was made to retire on 31.12.2001 on the basis of his age calculated on recommendation of a Medical Board, the writ application, namely, CWJC No. 5342 of 2002 was moved. The writ was allowed on 18.12.2003. The date of superannuation was quashed. A direction was issued that the appellant will continue in employment of the respondents till he has rendered 42 years of service which he was to complete on 30th June, 2010. A leeway was granted to the respondents to take a decision with regard to payment of salary between the period he was superannuated and when the writ application was allowed. The said decision of payment of salary was to be taken within 30 days. No decision was taken but an appeal was preferred by the Electricity



Board before a Division Bench by filing LPA No. 1247 of 2004. The Division Bench after considering the dispute as well as the factual and legal position dismissed the appeal of the Bihar State Electricity Board on 17.11.2005 refusing to interfere with the decision of the learned Single Judge. Thereafter, an order dated 30th of January, 2006 was passed by the respondent-Electricity Board re-instating the petitioner, holding that the period of claim for salary will be treated as a period of “*no work no pay*”.

Learned counsel representing the appellant seems to be correct in making a submission that the learned Single Judge has committed an error because he did not take the entirety of the factual position into consideration. The retirement of the appellant in the year 2001 was held to be invalid. The appeal against such a decision of the learned Single Judge was also dismissed. Since the matter did not travel beyond the Division Bench, the appellant was reinstated, but all the while, despite the judgment having been given in favour of the appellant at the level of the learned Single Judge, it is the case of the respondents that he did not work, whereas the appellant says that he gave his joining and he was prevented from working on the plea that the appeal of the Electricity Board was pending and there was an interim order passed by the Division Bench, initially.

In the above factual backgrounds when the order of



superannuation of the appellant was declared to be illegal and invalid decision by the learned Single Judge and the said order of the learned Single Judge was upheld by the Division Bench, since the order of the learned Single Judge merged with the order of the Division Bench, which too held the superannuation of the appellant to be illegal, then the decision of the erstwhile Bihar State Electricity Board to remove him from work was per se illegal decision which did not find favour with the Courts.

If it was a case of removal or retirement of the appellant to be in order and if the appellant had refused to work under the respondents, the occasion for applying the principle of “*no work no pay*” could have arisen as an arguable case, but since superannuation of the appellant before his age of actual retirement was a decision, which did not find favour both by the learned Single Judge and affirmed by the Division Bench, then the principle of “*no work no pay*” has been wrongly applied. It is basically an arbitrary decision taken by the Electricity Board to deny what would have been rightfully due to the appellant, if he was allowed to work after 31st of January, 2001 till he actually superannuated in the year 2010.

In view of the same, the impugned order dated 17.9.2013 of the learned Single Judge is set aside. The part of the order dated 30th of January, 2006 by which the salary was refused is also quashed.



The appeal is allowed and direction is given upon the respondent-Electricity Board to pay the salary to the appellant for the period 01.02.2001 till 30th of January, 2006 within a period of eight weeks from today.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

S.Pandey/-

AFR/NAFR	AFR
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