

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1215 of 2014
IN
Civil Writ Jurisdiction Case No. 17617 of 2013**

- =====
1. Vidya Prasad Sinha S/o Late Deva Singh C/o- Sri Sanjay Kumar Sinha, Sarswati Bihar, Ambedkar Path, Rukunpura, P.O.- Veterinary College, P.S.- Rupaspur under District Patna
 2. Ramanand Pandey S/o Ajay Kumar Chetna Samiti, A.G. Colony, P.O. Ashiana Nagar, P.S.- Shastri Nagar under District- Patna

.... Appellant/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The Secretary, Welfare Department, Government of Bihar, Patna
3. The Secretary, Finance Department, Government of Bihar, Patna
4. The Bihar State Social Welfare Advisory Board, through its Incharge- officer House No. 55/84 & 56/84 Officers Flat, New Punaichak, Patna- 800023, District- Patna
5. The Secretary, Bihar State Social Welfare, Advisory Board, House No. 55/84 & 56/84 Officers Flat New Punaichak, Patna- 800023, District- Patna
6. The Central Social Welfare Board, through its Chairman, Samaj Kalyan Bhawan, B/12, Tara Crescent Institutional Area, New Delhi- 110015

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harendra Kumar Tiwary

For the Respondent/s : Mr. Pravin Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-11-2017



Seeking exception to an order dated 07.07.2014 in CWJC No. 17617 of 2013 this appeal has been filed under Clause 10 of the Letters Patent.

The petitioner was appointed in connection with an execution of scheme by the Bihar Social Welfare Advisory Board (hereinafter referred to as 'the Board') and claiming gratuity the writ petition was filed. The learned Writ Court found that the employees of the Board who were hired are not entitled for gratuity and rejected the claim.

Learned counsel for the appellant pointed out that in case of various employees gratuity has been granted and invited our attention to Annexure-5 an order passed in case of one Mohd. Nasimuddin Hingu, a retired Driver, to whom gratuity was paid. However, from the counter affidavit filed by the Bard it is seen that on 25.03.2004 in CWJC No. 207 of 2000 (Birendra Kumar Sinha & Ors. vs. State of Bihar & Ors.) and thereafter on 28.10.2005 in LPA No. 486 of 2004 (Murlidhar Prasad and Ors. vs. The State of Bihar & Ors.) this Court declined to issue any direction to the State Government for grant of benefit of pension and gratuity by holding that when employees under a scheme were not regular employees or hired on contract for implementation of the scheme itself, no



direction cannot be issued for granting them the benefits as regular employees. It is said that the State Government has decided to grant gratuity only to the regular employees of the Board, But as far as the employees who were employed by the Board under the scheme are concerned, benefit of gratuity is not permissible. The grant of pension and gratuity are matters of conditions of service and the State Government denies liability for payment of pension and gratuity to the employees of the Board. Once payment is not based on statutory or existing Rules merely because gratuity is granted to some employees that also according to the respondents by virtue of the decision of the State Government to regular employees of the Board, we see no reason to make any indulgence into the matter.

It is a case where there is nothing available on record that the employees on contract employment under the scheme is entitled to gratuity. Once the right of the petitioner based on statutory provision is not established mandamus cannot be issued and also when the petitioner claims parity may be on wrong ground and benefit by the State Government in case of the employees who have been granted the benefit are regular employees of the Board.

Taking note of all the reasons as indicated by the Writ Court for rejecting the claim we see no reason to interfere into the



matter.

The appeal is therefore dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr.l./-

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