

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14706 of 2016

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1. Talkeshwar Mistry, Son of Late Ram Janam Mistry, Resident of Village - Sherpur, P.S. - Karpi, District - Arwal.
 2. Upendra Prasad Saha, Son of Late Prithvi Chand Saha, Resident of Sisiya, P.S. Barari, District - Katihar.
 3. Radha Pandey, Son of Late Baleshwar Pandey Resident of Village - Dariyapur, P.S. - Parsa Bazar, District - Patna.
 4. Daroga Prasad Son of Budhan Mahto Resident of Village - Kashi Ram Ke Pipara, P.S. Mirganj, District Gopalganj.
 5. Surendra Prasad Singh Son of Late Ram Nagina Singh Resident of Village - Dariyapur, P.S. - Parsa Bazar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. Principal Secretary, Finance Department, Govt. of Bihar, Patna.
3. Finance Commissioner, Govt. of Bihar, Patna.
4. Principal Secretary, Water Resources Development Department, Govt. of Bihar, Patna.
5. Deputy Secretary, Command Area Development Directorate, Water Resources Department, Govt. of Bihar, Patna.
6. Gandak Command Area Development Agency, Muzaffarpur through its Secretary.
7. Superintending Engineer (I) H.Q. Gandak Command Area Development Agency, Muzaffarpur.
8. Secretary, Gandak Command Area Development Agency, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Umashankar Prasad, Sr. Advocate Mr. Kamala Kant Tiwary, Advocate
For the State	:	Mr. Lalit Kishore, PAAG- 1 Mr. Manish Dhari Singh, A.C. to PAAG-1
For GADA	:	Mr. Satish Chandra Jha-3, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-06-2017

Petitioners have filed this writ petition and seek a
command to the respondent to grant pensionary benefit to all



employees of the Gandak Command Area Development Agency, Muzafarpur appointed prior to 01.09.2005 in accordance to the decision of the Board of Directors of GADA dated 29.06.1999 and 10th of August 1999 and further declare the Bihar Agricultural and Rural Area Development Agency Service Condition Conduct Discipline Control and Appeal Rules, 2010 (hereinafter referred to as “the Rule of 2010”) as *ultra vires*, particularly the provisions of Rules 132 and 133 as they have been formulated contrary to the provisions of Section 39 of the Bihar Agriculture and Rural Area Development Agency Act, 1978.

2. Facts in brief indicates that for the purpose of improvement and enhancement of agricultural production, the State of Bihar thought it appropriate to modernize and develop the irrigation system and to provide optimum irrigational facility to the land falling within the Command Area of three rivers mainly Kosi, Gandak and Sone by constituting three Command Area Development Authorities and accordingly vide resolution passed on 20th of October, 1973 the Kosi Command Area Development Authority, the Sone Command Area Development Authority and the Gandak Command Area Development Authority were constituted and the case in hand pertains to the employees working in the Gandak Command Area, Muzaffarpur.



3. It is the case of the petitioners that after the Command Areas were constituted, as there was no service rule applicable, the resolutions in question were passed on 10.08.1999 and 29.06.1999 taking a decision to make applicable all government rules and regulations with regard to service conditions of the employees. However, by virtue of the powers conferred under Section 39 of the Bihar Agricultural and Rural Area Development Act, 1978 the Rules of 2010 have been framed and now in pursuance to the rule as the pension and Provident Fund are being governed under Rules 132 and 133, *inter alia*, contending that under Section 39 of the Act of 1978, it is the Board which is empowered to formulate the rule and the rules in question have been formulated by the State Government, therefore, they being *ultra vires* to the Act of 1978 be declared as illegal, the writ petition is filed and the dual relief claimed are that the pension and other benefits to the petitioners as per the resolutions dated 29.06.1999 and 10.08.1999 be granted and the rule be declared as *ultra vires*.

4. As far as the prayer for granting benefit under the resolution of 29.06.1999 and 10.08.1999 are concerned, this issue stands decided by virtue of orders passed by this Court in C.W.J.C. No. 21105 of 2013 (Ramesh Prasad Singh & Ors. Vs. The State of Bihar & Ors.) on 24.03.2014, wherein it has been held by a Single



Bench of this Court that once the statutory rules have come into force based on the resolution passed, the benefit cannot be granted as the provisions of Rule 49 makes the rule applicable to all employees working in the authority and, therefore, once the statutory rules of 2010 have come into force, the benefit of the resolution cannot be granted. This judgment rendered by the learned Single Bench on 24.03.2014 has been affirmed by the Division Bench vide order dated 16.05.2016 passed in Letters Patent Appeal No. 11 of 2015, wherein also the Division Bench has held that once the service regulations have been formulated by the regulations of 2009 by virtue of Regulation 49, every employee appointed prior to publication of the Regulation would be governed by the Regulation and, therefore, they cannot seek the benefit of the Resolutions passed earlier, as indicated on 29.06.1999 and 10.08.1999.

5. Accordingly, now this relief to the petitioners cannot be granted.

6. The other relief claimed is to declare the rules of 2010 as *ultra vires*. It was argued before us that under Section 39 of the Act of 1978, power is given to the Board to constitute the rule after due approval of the State Government and by referring to certain correspondence filed along with the supplementary affidavit on 22.06.2017, an argument is developed to say that in this case the



rules have been formulated by the State Government and not by the Board and, therefore, the rules are *ultra vires*, particularly, the rule governing the grant of pensionary benefit and Provident Fund.

7. On the contrary, learned counsel representing the respondents points out that the rules have been formulated by the Board of Directors and only approval has been obtained by the State Government and the correspondence in question are clarification sought for by the State Government in the matter of grant of approval and, therefore, the contention of the petitioners that the rules have been formulated by the State Government and not by the Board is rebutted by the respondents.

8. We find the contention of the respondents to be correct. There is nothing available on record to substantiate the contention of the petitioners that the rules in question were formulated contrary to Section 39 of the Regulation 2010 by the State Government and not by the Board. On the contrary, the documents relied upon by the petitioners are nothing but documents or correspondence between the State Government and the members of the Board for the purpose of grant of approval of the Regulation and, therefore, we are unable to accept the contention of the petitioners that the Regulations were formulated by the State Government and not by the Board. The contentions of the petitioners in this regard are wholly misconceived



and, therefore, we see no reason to make any indulgence into the matter.

9. The Writ Petition stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.07.2017
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