

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2002 of 2015

In

Civil Writ Jurisdiction Case No.7335 of 2011

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1. The State of Bihar through Chief Secretary, Bihar, Patna
 2. The Principal Secretary, Building Construction Department, Bihar, Patna
 3. The Chief Engineer, Building Construction Department, Bihar, Patna
 4. The Executive Officer, Garden Division Building Construction Department, Bihar, Patna

... .. Appellant/s

Versus

Sanjay Kumar Son of Late Jagarnath Thakur resident of vir Kunwar Singh
Road No. 1, Purani Jakkanpur, District - Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr Anjani Kumar, Sr. Advocate, AAG 4
		Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ajit Kumar Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 18-09-2017

The State of Bihar are the appellants in the Letters Patent Appeal against the order of the learned Single Judge dated 17.09.2013 passed in CWJC No.7335 of 2011.

The writ was filed by the private respondent seeking a direction of compassionate appointment on account of death of his father, who was working as Gardener under the appellants. The learned Single Judge, based on a decision of an earlier Single



Judge, passed in CWJC No.16060 of 2004, decided on 03.05.2007, allowed the writ holding that if a work charge employee worked for a period of 12 months or more, he becomes a regular employee automatically.

Learned Additional Advocate General No.4 submits that not only the order of the learned Single Judge decided in the year 2007, which was the case of Subhash Paswan v. State of Bihar, was based on an erroneous understanding of the scheme, which led to yet another erroneous decision by the learned Single Judge whose order is appealed against. This submission has been made in view of various decisions of this Court, especially of bigger strength. One of the earliest judgment of a Full Bench in this regard is the case of *Durga Nand Jha v. The State of Bihar, reported in 2007 (4) PLJR 259*.

Not only that, there are certain Division Bench decisions of recent origin, which are the case of State of Bihar v. Bimli Devi (LPA No.1566 of 2015), decided on 24.11.2015. The Division Bench has taken note of a large number of decisions on the issue and also held that any decision holding a work charge employee, who has acquired a permanent status on the basis of 1949 PWD Code, is an erroneous decision till such an employee acquires the status of permanency by a conscious decision. The Court would



like to reproduce some of the observations from the said decision, especially of the then Acting Chief Justice.

“35. The expenses, including the wages and allowances of the staff in a work charged establishment, are chargeable to the works to be done by such an establishment. The pay and allowance of the employees, who are engaged in a work charged establishment, are, generally, shown as a separate cost under the estimated cost of the works. Inherently, therefore, the appointment of a work charged employee is temporary in nature inasmuch as the engagement comes to an end, which the project, when a work charged establishment undertakes, is complete.

36. In other words, the work charged employees are engaged on temporary basis till complete execution of the specified work for which the establishment may have been created. Since the very nature of the employment of a work charged employee is inherently temporary in nature, his service automatically comes to an end on the completion of the work, which was sole purpose of the establishment unless, otherwise, directed.

37. A regular employment under an establishment, thus, differs from a work charged establishment and the persons, employed for these two types of establishments, form two separate and distinct classes. Consequently, if a separate set of rules are framed for persons engaged on work charged establishment and the general rules, which are, otherwise, applicable to persons working on the regular establishment, are not made applicable to the work



charged employees, it cannot be said that the work charged employees were being treated arbitrarily or being discriminated against inasmuch as a Government has the freedom to frame different rules for different classes of its employees.

38. Family pension is provided to the family of a person, whose services are covered by the scheme relating to grant of family pension or the statute governing the grant of family pension. In the State of Bihar, pension is made available to a person by virtue of Rule 58 of Bihar Pension Rules, 1950, which we have reproduced above.

39. In order to apply Rule 58 of Bihar Pension Rules, 1950, his service has to be of the nature, as contemplated by Rule 58 of Bihar Pension rules, 1950, Rule 58 of Bihar Pension Rules, 1950 requires that in order to be eligible for pension, a service must be paid by the Government and the employment must be substantive and permanent. Since a work charged employee's service is not substantive and permanent, he cannot claim pension under rule 58 of Bihar Pension Rules, 1950, unless the provisions of Rule 58 of Bihar Pension Rules, 1950 are made applicable to him by any statute or by some executive instruction or scheme provided that such a executive instruction or scheme is, otherwise, valid in law. No statutory provision, executive instruction/ circular or notification or scheme has been brought to our notice, which makes a work charged employee entitled to pension in the State of Bihar. A work charged employee's entity and status materially differs from that of the regular employee. The permanent establishment of a State Government



has the state of permanency and will continue until abolished; whereas the work charged establishment is created as a temporary measure to complete a particular work and the engagement of the employees would come to an end, when the work is complete.

40. Necessarily, therefore, a person, engaged to work as a work charged employee, will cease to be an employee as soon as the work of the charged establishment comes to an end. The rights and status of a work charged employee are, therefore, different from that of a regular employee.”

Keeping the above status of law, the appeal has to succeed because it is nobody's case that the father of the private respondent was conferred the status of a permanent employee at any stage before his death.

Since compassionate appointment can only accrue to a permanent employee, therefore, the policy cannot be stretched or expanded to include such class of people for whom such provision was never envisaged.

In view of provision of law which emerges, the decision of the learned Single Judge passed in CWJC No.2002 of 2015 (Sanjay Kumar v. the State of Bihar & others) as well as the decision in CWJC No.16060 of 2004 (Subhash Paswan & others Vs. the State of Bihar & others), both the decisions seem to be erroneous, therefore, are no good law any more.



Appeal is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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