

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1171 of 2014
IN
Civil Writ Jurisdiction Case No. 10259 of 1999**

- =====
1. The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna.
 2. The Secretary to Govt. in the Department of Water Resource, New Secretariat Building, Patna.
 3. The Deputy Secretary to Govt. in the Water Resources Department, Sinchai Bhawan, Patna.
 4. The Director Land Acquisition and Rehabilitation Sinchai Bhawan, Patna.

.... Respondents of the writ application/Appellants
Versus

1. Bibha Kumari w/o Late Chandradeo Jha, Resident of Village Sattarwar, P.O. Mahishi, P.S. Mahishi, District Saharsa.
2. Manish Kumar S/o Late Chandradeo Jha, Resident of Village Sattarwar, P.O. Mahishi, P.S. Mahishi, District Saharsa.
3. Shammy Kumar S/o Late Chandradeo Jha, Resident of Village Sattarwar, P.O. Mahishi, P.S. Mahishi, District Saharsa.

Substituted legal heirs of petitioner no.-1 to the
writ application/petitioner no.-1, 2 & 3/respondents

4. Ramchandra Khan S/o Late Man Mohan Khan, Resident of Village Parri, P.O. Parri, P.S. Bangaon, District Saharsa.
5. Harendra Prasad Singh S/o Late Kapildeo Singh, Resident of Village Gamharia, P.O. Jitapur, P.S. Murliganj, District Madhepura.

.... Respondent/s

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Appearance :

For the Appellants	:	Mrs. Namrata Mishra, GA-6 Mrs. Archana Jha, AC to GA-6
For the Respondents	:	Mr. Anil Kumar Jha, Sr. Advocate Mr. Prafull Chandra Thakur, Advocate Mr. Dinesh Chaudhary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-05-2017



Seeking exception to an order dated 03.02.2012 passed by the learned Writ Court in C.W.J.C. No.10259 of 1999, this appeal has been filed under Clause 10 of the Letters Patent.

Facts, in nut shell, which are relevant for the decision of this appeal, go to show that after certain lands were taken over for construction of embankment, the land oustee were granted appointment way back in the year 1988-89. They continued to work for various period of time and in the year 1997 action was taken for terminating their services. Resultantly. many writ petitions were filed before this Court and finally the matter was decided by a Division Bench of this Court in L.P.A. No.272 of 2008, a copy of the same is available on record.

As far as the present application is concerned, one Sri Chandradeo Jha was also granted appointment under the rehabilitation scheme but when his services were terminated along with all other similarly situated persons in the year 1997, he also filed the writ petition in the year 1999. During the pendency of the writ petition he having expired, his widow, the present Respondent No.1 and the legal heirs were brought on record. After hearing all concerned on 3.2.2012 the learned Writ Court found that in C.W.J.C. No. 10259 of 1999, C.W.J.C. No.13231 of 2000 and C.W.J.C. No.14075 of 2003 the question in issues have been considered and in the cases of various



other identically situated persons the writ petitions have been allowed and the action for terminating their services quashed. It was also found that the orders passed in the aforesaid writ petitions were upheld and L.P.A. filed by the State Government being L.P.A. No. 13 of 2005 and L.P.A. No.272 of 2008 were also dismissed. Taking note of the fact that the case of late Chandradeo Jha was identical in nature, the writ petition of Chandradeo Jha has been allowed with a direction for reinstatement. Since reinstatement is not possible, a direction has been issued to pay terminal benefit to Respondent No.1, his widow, and consider her claim for compassionate appointment, if permissible.

Challenging the aforesaid direction with regard to compassionate appointment of legal heirs of late Chandradeo Jha, this appeal has been filed by the State Government and during the course of hearing of the appeal learned counsel for the petitioner invited our attention to certain observations made in para 7 of the order passed on 12.7.2011 in L.P.A. No.272 of 2008 and argued that in the case of all other employees it was an admitted position that they were displaced persons, their lands were taken over and, therefore, the benefit granted. It was tried to be argued by referring to three documents i.e. Annexure-1, Annexure-3 and Annexure-4 that as far as Chandradeo Jha is concerned, he was not a displaced person, his land was not taken over and, therefore, he was not entitled for identical benefit and



on these grounds the benefit is tried to be denied to the legal heirs of late Chandradeo Jha. Annexure 1 is a communication dated 17.2.1997 wherein the observations are made to say that the land of Chandradeo Jha has not been taken over and he was not a displaced person. However, the remaining documents, namely, Annexure-3 and Annexure-4 are dated 9.5.2012 and 20.6.2012 i.e. documents prepared much after dismissal of the original writ petition on 3.2.2012. Accordingly taking note of these documents learned counsel for the respondents vehemently argued that grounds not raised in the writ petition cannot be permitted to be raised now and Annexure-3 and Annexure-4 cannot be relied upon for holding that late Chandradeo Jha was not a displaced person. As far as Annexure 1 is concerned, learned counsel for the respondents argues that once Chandradeo Jha was appointed, a right accrued to him to continue in service and if his right is to be taken away, the principle of natural justice, opportunity of hearing, causing an enquiry into the matter, recording a finding that he was not a displaced person was a minimum requirement of law and in this case all these legal aspects of the matter have been given a go bye and, therefore, the appeal is not maintainable.

We have considered the rival contentions and we find that the only reason indicated in the writ petition for not granting relief to the present respondents are that their case is distinguishable



from the earlier writ petitions and L.P.As filed and for this our attention was drawn to para 7 to the order dated 12.07.2011 passed in L.P.A. No.272 of 2008. It is an admitted position that in this para the learned Division Bench hold that the fact with regard to the persons being displaced, their land being taken over and they being appointed on the basis of the rehabilitation scheme is admitted and the case of the present respondent, legal heirs of Chandradeo Jha is tried to be distinguished by referring to three documents Annexures 1, 3 and 4. As far as Annexure 1 is concerned, it is an office order issued, wherein a finding is recorded based on the certificate dated 19.6.1997 to say that Chandradeo Jha is not a displaced person and his land has not been taken over. However, the basis of recording such a finding i.e. Annexure 1 is not available on record. Even though, learned counsel for the State tried to argue that a show cause notice was issued to Chandradeo Jha and thereafter the finding recorded, but neither a copy of show cause notice nor reply submitted by late Chandradeo Jha and the findings recorded by the competent authority on the show cause notice are available on record. Even the enquiry conducted with regard to the allegations made against Chandradeo Jha is not available in the record of this appeal or before the learned Writ Court.

That being so, we are not impressed by the observations



made or the findings recorded in Annexure 1 and hold that they are not passed after following any process known to law. It has been passed in total disregard to and in violation of principle of natural justice. There is no enquiry report, there is no finding or proper enquiry and, therefore, Annexure 1 cannot be given any weightage in this regard. As far as Annexures 3 and 4 are concerned, they have been issued much after the writ petition was decided and, therefore, these documents, which did not form part of the documents, were utilized for the purpose of terminating the service of Chandradeo Jha in the year 1997 and, therefore, based on these documents the contention of the petitioners cannot be accepted.

We find that based on the documents that have been adduced for the first time before this Court and based on Annexure-1, which is an order not issued in accordance with requirement of law, it cannot be said that Chandradeo Jha was not a displaced person and, therefore, he cannot be granted the benefit as was granted to other similarly situated persons. It is a case, where the service of the deceased employee was terminated after his appointment without following the due process of law in violation of the principle of natural justice. As the same cannot be upheld, we see no error in the order of the Writ Court, particularly after death of the employee when only terminal benefits are directed to be granted to the widow lady.



Accordingly, finding no error in the order passed by the learned Writ Court, the appeal stands dismissed.

The appellants are granted two months’ time to comply with the order.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.05.2017
Transmission Date	

