

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.653 of 2012
IN
Civil Writ Jurisdiction Case No. 10069 of 2010

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Mithilesh Kumari Jha W/O Kameshwar Jha R/O Bose Park, M.G. Road,
Bhagalpur-01, P.S.-Kotwali, Town And Distt.-Bhagalpur

.... Appellant/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Industries,
Govt. Of Bihar, Patna
2. The Joint Secretary Department Of Industries, Govt. Of Bihar, Patna
3. The Director, Handloom And Sericulture Department Of Industries, Govt. Of
Bihar, Patna
4. The Principal, Bihar Silk And Textile Institute, Nathnagar, Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. PURUSHOTTAM KUMAR JHA

For the Respondent/s : Mr. A.UJJWAL SC 4

Mr. Maruth Nath Roy, AC to SC 4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-11-2017

Seeking exception to an order dated 24.11.2011 passed by
the learned Writ Court in CWJC No. 19969 of 2010 this appeal has
been filed under Clause 10 of the Letters Patent.

In the matter of grant of ACP to the appellant the learned
Writ Court found that under the ACP Rules framed under Article 309
of the Constitution, Rule 4(4) Explanation (1), the services rendered
by an employee as daily wages employee and an ad hoc employee or
contract worker cannot be counted. In the present case, the petitioner
was brought in the regular establishment with effect from 09.09.1993



and for all practical purposes his services have been counted from the said date for granting of promotion under ACP scheme. However, he wanted that the services rendered by him prior to that in the daily wages basis, i.e. from 1991, should also be reckoned.

The learned Writ Court rejected this claim by holding that for the purpose of granting ACP Scheme the Rules prohibits consideration prior to the aforesaid period. The contention of the petitioner could not be accepted. In doing so, we are of the considered view that the learned Writ Court has not committed any error warranting reconsideration.

Even though the learned counsel placing reliance on the judgment in the case of **Direct Recruit Class II Engg. Officers' Association vs. State of Maharastra (AIR 1990 Supreme Court 1607)** argues that the period can be counted. Once we find from the statutory Rules the period cannot be counted, no interference into the matter is called for.

The appeal is void of substance and is therefore rejected.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16/11/2017
Transmission Date	

