

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1981 of 2015

In

Civil Writ Jurisdiction Case No.8081 of 2014

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1. Himanshu Kumar Choubey Son of Sri Nakul Prasad Choubey resident of Village- Salempur, Police Station- Amarpur, District- Banka
 2. Om Prakash Pandey @ Ratish Kumar Pandey Son of Sri Rajendra Prasad Pandey resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 3. Ram Prasad Manjhi, son of Late Mataroo Manjhi, resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 4. Rajesh Kumar Pandey @ Rajesh Kumar, son of Ugra Mohan Pandey, resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 5. Kundan Kumar Chaturvedi, son of Vijay Bhushan Chaturvedi, resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 6. Jiwan Kumar Prasant, son of Upendra Sharma, resident of Village- Daliya, Police Station- Bounsi, District- Banka
 7. Rajesh Kumar Choudhary, son of Chandeshwar Prasad Choudhary Mandeshwar Choudhary @ Mandeo Prasad Choudhary, resident of Village- Phaga, Police Station- Bounsi, District- Banka

... .. Appellant/s

Versus

1. The Union of India through the secretary, Department of Railway (Ministry of Railway), Rail Bhawan, New Delhi
2. The Secretary, Department of Railway, Rail Bhawan, New Delhi
3. The General Manager, Eastern Railway, 17 Netaji Subhash Road, Have Street Kolkata, West Bangal
4. The Chief Administrative Officer (Construction), Eastern Railway, 14 Strand Road, Kolkata (W.B.)
5. The Deputy General Manager, Eastern Railway, 17- Netaji Subhash Road, Have Street Kolkata
6. The Divisional Railway Manager, Eastern Railway Malda (W.B.)
7. The Deputy Chief Engineer (Construction) Eastern Railway, Bhagalpur
8. The State of Bihar
9. The District Magistrate, Banka
10. The District Land Acquisition Officer, Banka

... .. Respondent/s

Appearance :

For the Appellants : Mr. Y.V.Giri, Senior Advocate
Mr. Balram Kapri, Advocate
For the Respondent Railways: Mr. D. K. Sinha, Senior Advocate
Mr. Anil Singh, Advocate
For the Respondent State of Bihar : Mr. Madanjeet Kumar, G.P.-20



**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

Date : 03-10-2017

Heard learned counsel for the parties.

Appeal has been preferred by the appellants against the order of dismissal of the writ application by the learned single Judge vide order dated 17.09.2015. The writ application was filed by the appellants for a direction upon the respondent Railway authorities to show parity in the matter of providing employment on account of acquisition of their land for construction of certain project at Mandar Hill. They also demanded that there should be no discrimination in the matter of applicability of the Ministry of Railways Circular dated 10.11.1989, a copy of which is Annexure-7 to the writ application, since there was kind of pick and choose indulged in by the railways.

The writ application of the appellants was dismissed by the learned single Judge primarily on two grounds. One, that previously a writ application was filed by these appellants or some of the appellants and that writ application was permitted to be withdrawn by the learned single Judge to move the Central Administrative Tribunal for redressal of their grievance. This order was passed on 17.12.2003. a copy of which is Annexure-1 to the



writ application. The learned single Judge, therefore, came to an opinion that a second writ application would not be maintainable and failure on the part of these appellants to move the Central Administrative Tribunal for assertion of their right and sleeping over the same despite indulgence shown to them by the learned single Judge comes in the way of maintaining the second writ application.

The other ground which has been culled out from the order of the learned single Judge is that there has been laches and delay on the part of these appellants in asserting their right because the acquisition was of the year 1999. The previous writ was withdrawn in the year 2003 and thereafter they have only filed representation for reconsideration after the decision of Hon'ble Supreme Court dated 11.07.2013. The date of representation is 25.12.2013, copy of which is Annexure-12 to the writ application.

Learned Senior Counsel for the appellants submits, based on a recent decision of the Hon'ble Apex Court, which is the case of ***State of Uttar Pradesh and Others vs. Arvind Kumar Shrivastava and Others***, reported in **(2015) 1 SCC 347**, that where a decision has been rendered by a Court *in rem*, the laches and delay if any may not come in the way of a right of a citizen. The observation of the Hon'ble Supreme Court rendered in paragraph 22.3 is



reproduced as the same has been relied upon on behalf of the appellants :

“However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma and Ors. v. Union of India (supra) (Emphasis supplied). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

The other submission is that after the Division Bench order that all persons whose land were acquired were required to be treated equally was rendered on 06.12.2012 and the same decision



with regard to some other applicants or candidates whose land were acquired was even upheld by the Hon'ble Apex Court in decision dated 11.07.2013, the right of these appellants for consideration and be treated equally was reinforced. It was in this background that a fresh application for consideration was filed in terms of Annexure-12 to the writ application and failure on the part of the railways authorities to take a decision was the cause of action for filing the second writ application, which has been dismissed on technicality rather than understanding the essence of the decision of the Hon'ble Apex Court that there has to be uniformity in application of scheme for employment of people whose land has been acquired for the railways project in question.

No doubt an earlier writ application was permitted to be withdrawn to go before the Central Administrative Tribunal which these appellants or some of the appellants chose not to do so. We have certain reservations whether asking these appellants to go before the Central Administrative Tribunal was a correct position to take because it was a question of enforcement of a right flowing from 1989 circular for providing employment and not a simple prayer for employment under the railways.

Be that as it may, when the Hon'ble Apex Court vide its order dated 11.07.2013 held that the scheme for providing employment



to persons whose land was acquired in terms of the 1989 circular created a right in favour of one and all, then naturally the issue of equality and uniformity in decision making kicks in and this is the reason why the appellants decided to move the railway authorities by filing Annexure-12, which is their representation. The non-consideration thereof became the cause of action for moving the second writ application.

Both the decisions and the reasons, therefore, provided for dismissing the writ application by the learned single Judge seems to be misplaced. The right for consideration of these appellants for employment will flow in terms of the 1989 circular and equality and applicability of Article 14 and 16 being *sine qua non* to the ethos of the Constitution of India, the obligation of the railways to consider their case for employment if they fulfill the requirement is paramount.

The impugned order dated 17.09.2015 passed by the learned single Judge in C.W.J.C. No. 8081 of 2014 is set aside. The appeal is allowed. The respondents are directed to consider the case of all such persons whose land have been acquired for the said project in accordance with the circular of 1989 including the appellants.



A decision in this regard must be taken within a period of three months for the reason that enough time has already been lost in litigation over a period of time.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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