

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1703 of 2015
IN
Civil Writ Jurisdiction Case No. 28 of 2015

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Radhey Krishna Rai Son of Late Sukho Rai resident of village - Bhushawal
Danapur, P.S. Phulwarisharif, District - Patna

.... Appellant

Versus

1. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna - 4
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
4. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
5. The Accountant General (Audit), Bihar, Patna
6. The State of Bihar through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna

.... Respondents

With

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Letters Patent Appeal No. 1696 of 2015
IN
Civil Writ Jurisdiction Case No. 332 of 2015

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Daroga Rai Son of Late Sukai Rai resident of Mohalla Mitra Mandal Colony, B-264, Shyam Bhawan, Anisabad, P.S. Phulwarisharif, District - Patna

.... Appellant

Versus

1. The Bihar Industrial Area Development Authority through its Managing Director Udyog Bhawan, East Gandhi Maidan, Patna 4
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
4. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna 4
5. The Accountant General (Audit), Bihar, Patna
6. The State of Bihar through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna

.... Respondents

With

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Letters Patent Appeal No. 1698 of 2015
IN
Civil Writ Jurisdiction Case No. 10269 of 2014

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- 1. Ashok Kumar Singh Son of late Ram Janam Singh resident of Village - Saidanpur, P.S. - Gaurichak, District - Patna, presently posted as Area Incharge, Industrial Area Bihiya, Bihar Industrial Area Development Authority.
- 2. Kiran Kumar Sinha son of late Rameshwar Prasad resident of Village - Dharampur, Post - Dumarkola, P.S. - Khaira, District - Jamui, presently posted as Area Incharge, Aurangabad/Gaya, Bihar Industrial Area Development Authority.
- 3. Satyendra Kumar Son of late Raj Narain Kumar resident of C/4, Madhav Block, Devki Dham Apartment, West Boring Canal Road, P.S. - Srikrishnapuri, District - Patna, Technical adviser to the Managing Director (retired), Bihar Industrial Area Development Authority.

.... Appellants

Versus

- 1. Chairman Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
- 2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
- 3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
- 4. The Accountant General (Audit), Bihar, Patna.

.... Respondents

With

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Letters Patent Appeal No. 1783 of 2015
IN
Civil Writ Jurisdiction Case No. 1069 of 2015

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- 1. Narendra Kumar Yadav Son of Late Upendra Narayan Mandal resident of Ras Bihari Nagar, Dr. Upendra Narayan Mandal Path, Ward No. 18, P.O. & P.S. Madhepura, District & Town - Madhepura, Presently residing at House No. 83, 1st Floor, Lane No. 1, Rajeshwar Nagar, Phase - 1, Shahashtradhara Road, Dehradun (Uttaranchal)
- 2. Shailesh Kumar Son of Late Kamta Prasad Srivastava resident of Mukherjee Seminari Road, P.O. Ramna, P.S. Mithanpura, District - Muzaffarpur

.... Appellants

Versus

- 1. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
- 2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
- 3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
- 4. The Accountant General (Audit), Bihar, Patna
- 5. The State of Bihar through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna

.... Respondents

With

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Letters Patent Appeal No. 2166 of 2015
IN



Civil Writ Jurisdiction Case No. 6977 of 2015

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1. Ram Briksh Das Son of late Yadu Das Resident of village - Kanhauli, P.S.- Mithanpura, District - Muzaffarpur.
 2. Md. Zeyaur Rahman Son of late Noorul Ambeya Resident of village - Mithanpura, P.S.- Mithanpura, District - Muzaffarpur.
 3. Bishwa Kalyan Ganguli son of late A.K. Ganguli Resident of R.K. Ashram, Bela, P.S.- Mithanpura, District - Muzaffarpur.
 4. Deepa Rani Dey Daughter of Late Indu Bhushan Dey Resident of L.N. Nagar, P.S.- Mithanpura, District - Muzaffarpur.
 5. Ram Briksh Sah son of late Ramji Sah Resident of Village - Kanhauli Bisundatt, P.S.- Mithanpura, District - Muzaffarpur.
 6. Rameshwar Prasad Rai son of Sri Uday Rai Resident of Village- Raksha West Toal, P.s Karja District Muzaffarpur.
 7. Ashok kumar son of late Roop Narain Lal Resident of Village - Maripur School Road, P.S.- Kazi Mohammadpur, District - Muzaffarpur.
 8. Prabhu Nath Paswan son of late Ram lagan Paswan Resident of Village - Bela Chapra, P.S.- Bela, District - Muzaffarpur.
 9. Baleshwar Ram Son of late Fudena Ram Resident of Village - Satpura, P.S.- Bhagwanpur, District - Hazipur.
 10. Krishna Kumar Choudhary Son of Sri Radhey Shyam Choudhary Resident of Kalam Bagh Road, P.S.- Kazi Mohammadpur, District - Muzaffarpur.
 11. Shanti Devi wife of late Sheo Sharan Das Resident of Nagadah, Kabasiya Chowk, P.S.- Begusarai Town, District - Begusarai.
 12. Lalita Devi wife of Sri Jawahar Prasad Sah Resident of Village - Sugai Patti, P.S.- Gaighar, District - Muzaffarpur.
 13. Ainul Haque Son of late Usuf Resident of Village - Kanhauli Busundatt, Rajpoot Tola, P.S.- Mithanpura, District - Muzaffarpur.
 14. Vijay kumar Son of late Prabhu Narain Resident of Chak Bhikhi, P.S.- Maniyari, District - Muzaffarpur.
 15. Ahmad Husain Ansari son of late Madari Baks Resident of Village - Islampur, P.S.- Riga, District - Sitamarhi.
 16. Laxmi Paswan Son of late Mahavir Paswan Resident of Village - Bela Chapra, P.S.- Bela, District - Muzaffarpur.
 17. Sanjay kumar Pandey Son of Bishandeo pandey Resident of Village - Koily, P.S.- Makdumpur, District - Jehanabad.
 18. Ram Nath Sah Son of late Kamla kant Sah Resident of village - Mithanpura, P.S.- Mithanpura, District - Muzaffarpur.
 19. Mritunjai Prasad Singh Son of late Anbir Prasad Singh Resident of Village - Ahiyapur, P.S.- Sahebganj, District - Muzaffarpur.

.... Appellants

Versus

1. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The State of Bihar through the Pricipal Secretary, Department of Industries Govt of Bihar, Patna.

.... Respondents

With



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Letters Patent Appeal No. 1843 of 2015
IN
Civil Writ Jurisdiction Case No. 9438 of 2014

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Ram Pravesh Singh, Son of Sri Gariba Singh, resident of permanent resident of Barun,
P.O. AND P.S.- Surajpura, District- Rohtas, presently residing at 1195, A/2, Dayanand
Colony, New Railway Road, Gurgaon, Haryana

.... Appellant

Versus

1. The Bihar Industrial Area Development Authority through its Managing Director,
Udyog Bhawan, East Gandhi Maidan, Patna- 4
2. The Managing Director, The Bihar Industrial Area Development Authority null Udyog
Bhawan, East Gandhi Maidan, Patna- 4
3. The Secretary, The Bihar Industrial Area Development Authority Udyog Bhawan,
East Gandhi Maidan, Patna- 4
4. The Executive Director, The Bihar Industrial Area Development Authority Udyog
Bhawan, East Gandhi Maidan, Patna- 4
5. The Accountant General (Audit), Bihar, Patna.

.... Respondents

With

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Letters Patent Appeal No. 1767 of 2015
IN
Civil Writ Jurisdiction Case No. 19058 of 2014

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Manoher Nath Mahato S/o Late Punuva nath Mahato Resident of Village Bada Moory,
Post Chhotamoory, P.S. Silli, District Ranchi, State Jharkhand.

.... Appellant

Versus

1. The State of Bihar through the Finance Secretary, Govt. of Bihar at Patna.
2. The Industrial Development Commissioner Industry's Department, Bihar at New
Secretariat, Patna.
3. The Director, Industries Department, Govt. of Bihar at Patna.
4. The Chairman, Bihar Industrial Area Development Authority, at Udyog Bhawan,
Patna.
5. The Managing Director, BIADA, Udyog Bhawan, Patna.
6. The Secretary, BIADA, Udyog Bhawan, Patna.

.... Respondents

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Appearance :

For the Appellant/s :	Mr. Rajeev Kumar Verma, Senior Advocate
(In all LPAs except L.P.A. No. 1767 of 2015)	Mr. Prashant Sinha, Advocate
For the Appellant :	Mr. Mahesh Prasad Singh, Advocate
(In L.P.A. No.1767 of 2015)	
For the Respondent BIADA:	Mr. Raneev Ranjan Prasad, Advocate
(In all cases)	Mr. Kumar Priyaranjan, Advocate
	Mr. Abhimanyu Vatsa, Advocate
	Mr. Abhishek Singh, Advocate
	Ms. Surbhi Kumari, Advocate



For the Respondent A.G. : Mr. Madhuresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 25-01-2017

Delay in filing the Letters Patent Appeals is condoned for the reasons indicated in the respective Interlocutory Applications. I.A. Nos. 7676 of 2015, 7659 of 2015, 7662 of 2015, 7985 of 2015, 9440 of 2015, 8243 of 2015 and 7936 of 2015 are allowed. With the consent of the parties, the Letters Patent Appeals are taken up on merits.

2. All these appeals arise from a common order dated 24.06.2015 passed by a learned single Judge in a batch of writ applications, the leading case being that of Radhey Krishna Rai i.e. C.W.J.C. No. 28 of 2015 with other analogous cases. Since the learned single Judge after considering the rival submissions and due deliberations came to a considered opinion that no financial obligation and liability can be created upon the respondent Bihar Industrial Area Development Authority (hereinafter referred to as 'the BIADA'), the writ applications came to be dismissed, so these appeals.

3. As per the order of the learned single Judge, most of these petitioners are former employees of the BIADA and they filed



the writ applications for a direction upon the BIADA to pay arrears arising out of 6th Pay Revision Committee recommendation for the period 01.04.1997 to 31.10.2006. Since the respondent authorities refused to extend the benefit, the legal battle was initiated by way of a batch of writ applications, which got clubbed together and heard together.

4. This Court also decided to hear all the appeals together for the reason that the judgment impugned is one though the counsels may be different and the Court had the privilege of assistance from them.

5. Learned senior counsel Mr. Rajeev Kumar Verma representing some of the appellants started off on the note that there was a decision on the part of the BIADA at one point of time to extend the benefit of the revised pay-scale, they cannot go back from that decision and not extend the benefit of revision of pay, meant for the employees of BIADA as they are at par with the State Government employees, as BIADA authorities had also adopted the rules and the regulations which are applicable to the State Government employees. The revisiting of the decision at this stage will surely have implications and consequences of financial kind to all these employees. Most of them are retired employees, and will be hit very hard if the impugned order of the learned single Judge is not



interfered with.

6. Yet another counsel pegged the argument on a very very high constitutional note by referring to Article 298 of the Constitution of India read with Articles 285 and 289 in support of his argument and according to his interpretation of Constitution such provisions in the Constitution itself are good enough to demolish the findings and the decision of the learned single Judge since BIADA is not working for profit and loss.

7. To clear the cobweb, we must understand the status of the entity against which the relief is being sought and such vicious attack is being mounted as if the authorities are deliberately and illegally rejecting the right of these appellants from begetting higher salary and consequential reliefs flowing therefrom.

8. The Bihar Industrial Area Development Authority Act, 1974, was passed by the State legislature with the object of providing planned development of industrial area, promotion of industries and matters appurtenant thereto. The Act came into force and from a reading of the Act, it is evident that even though it has been labeled and termed as a body corporate, the constitution of this body was not under the Companies Act. Since the body must have an identity and a seal, therefore, the legislators in their wisdom used the word 'corporate body' for this organization, which it is not.



9. The body's object, as already indicated above, was to accelerate industrialization by leasing out lands to the industries, which were interested in setting up their units in the State of Bihar and the powers in this regard were vested in the Board of Directors. For one reason or the other, which is not very difficult to understand, industrialization has not been one of the hallmark of the State of Bihar. The organization, as such, has not seen glorious days financially even in these days.

10. The question arises is whether such a body, which is in dire financial condition, can be compelled to take upon itself the privilege of adding more liability of additional revision of pay-scales etc. to the employees, at mere asking.

11. It may be clarified for record that may be as a functional mechanism when the body was put in place and in absence of any rules created for itself, they adopted some of the rules and regulations, which were applicable to the employees of the State of Bihar, that by itself does not make any of the employees of BIADA at par with State Government employees. They continued to be employees of a distinct independent statutory body. There is no obligation created upon the BIADA to be automatically bound by any revision of pay and privileges of the employees of the State as a matter of routine and course. If in the past certain decisions had been



taken to extend the benefit of such revision, such decisions could only be taken by the Board of Directors. The body has freedom to take its own decision, independent of the decisions of the State. It cannot be the case of the appellants that decisions of the State authorities will *mutatis-mutandis* apply to BIADA as has been sought to be prevailed upon the Court by the learned senior counsel and other counsels assisting the Court. In other words, BIADA and its board has to take a decision to extend or refuse any kind of perks and privileges including salary to its employees at par with State employees.

12. Many many years ago Hon'ble Supreme Court, while dealing with the case which was the case of A.K.Bindal and another vs. Union of India and others, reported in (2003) 5 SCC 163, has had to say in paragraph 17 of the decision :

“17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government



Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director (1989) 3 SCC 448). Since employees of Government Companies are not government servants, they have absolutely no legal right to claim that government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the Office Memorandum dated 12.4.1993 the Government had been providing the necessary funds for the management of Public Sector Enterprises which had been incurring losses. After the change in economic policy introduced in early nineties, Government took a decision that the Public Sector Undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the government will not provide any funds for the same. Such of the Public Sector Enterprises (Government Companies) which had become sick and



had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the Office Memorandum dated 19.7.1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two Office Memorandums which have been challenged in the writ petitions.”

13. Taking cue from the said decision and observation of the Hon’ble Supreme Court, counsel representing BIADA submits that nothing further is required to be urged and argued on their behalf as there cannot be more clarity than what the Hon’ble Supreme Court has had to say in paragraph 17, in the case of A.K.Bindal (supra).

14. The above proposition of law and the ratio should put to rest any kind of effort on the part of the appellants to shift the burden either upon the State for resources and finances for paying what they think is rightfully due to them or for any kind of pressure upon the BIADA as such to consider revision of their pay-scale merely because revision had been effected at the level of the State Government.



15. The Division Bench must give due credit to the learned single Judge for having compassion in his heart to make certain deliberation, which was not even required to be done in the first place. He asked the office of the Accountant General of the State of Bihar to carry out an audit, submit a report as to the financial condition of this body. This was done and the report of the said audit has been extracted and reproduced as part of the order. On due consideration the conclusion which could be arrived at is required to be reproduced from paragraph 23 of the impugned decision, which reads as under :

“23. In the considered opinion of this Court, the petitioners being ex-employee if they have a grievance with regard to malfunctioning of BIADA, of which they too were earlier its part and now have been deprived of the amount of enhanced salary due to the claim of BIADA of having financial exigency and if they find that this claim of financial exigency is on account of alleged misappropriation, they can always take steps against the authorities of BIADA as may be permissible to them in law but then for this reason, this Court cannot deviate from the settled principle of law by fastening of liability of additional expenditure on the head of salary and emoluments on the employer which is not in a position to pay on account of its sustaining



recurring loss. Such a direction against public policy can never be issued by this Court in exercise of power under Article 220 of the Constitution of India.”

16. Enough arguments, enough submissions and enough deliberations and exercise have been done. The law cannot be twisted to suit the appellants and go beyond what the writ Court has had to say or what the Hon’ble Supreme Court has had to say in A.K.Bindal’s case (supra).

17. All these appeals have no merit. Hence, they are dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	28.01.2017
Transmission Date	N/A

