

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.74 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 13120 of 2014**

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1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
Now the Bihar State Power (Holding) Company Ltd.
 2. The Secretary Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
 3. The Joint Secretary, B.S.E. Board (General Administration Department) Bailey Road, Vidyut Bhawan Patna.
 4. The Managing Director, B.S.E.B. Bailey Road, Vidyut Bhawan, Patna.
 5. The General Manager Cum Chief Engineer B.T.P.S. Barauni, District Begusarai.
 6. The General Manager Cum Chief Engineer Transmission Division, Patna.
 7. The Account Officer Transmission Circle, Patna.

.... Appellant/s

Versus

Chandra Prakash Singh, son of Late Guljar Singh, Resident of Jaitpur Ashram at & P.O. Tajpur P.S. Mohamadabad, District Farrukhabad (U.P.).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nikesh Kumar, Advocate

For the Respondent/s : Mr. Arun Kumar, Advocate

Mr. Ram Vinay Pd. Singh @ Sanjay, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 10-01-2017

The present Letters Patent Appeal is directed against an order dated 13th of January, 2015 whereby, the Circular issued by the appellant restricting overtime allowance to 150 hours was found to be violative of Articles 14 and 23 of the Constitution of India and the General Manager of the appellant was directed to examine the



records and to grant legitimate payment provided under law.

2. The writ applicant was appointed as an Assistant Operator on 3.9.1983 and superannuated on 31st of January, 2011. He claimed overtime allowance having worked beyond the duty hours for 1984 hours from the year 1997 to 2002.

3. In the counter affidavit filed, the appellant admitted the claim of the writ applicant for granting overtime allowance of 150 hours, total amounting to Rs.46,928. It is the ceiling of 150 hours which has been set aside by the learned Single Bench in the order under appeal.

4. The appellant has attached office order dated 19th of January, 1995 (Annexure-1 to the memo of appeal), contemplating grant of overtime allowance. The same reads as under:

“1. Office Order No.IX/OT.-1001/95 451/EB Dated, Patna, the 19.1.95.

In supersession of all previous orders in respect of over-time issued by the Board from time to time, it has now been decided as follows:-

(i) No over-time work shall be taken from the office staff (i.e. Secretariat, Clerical, Accounts, Store Personnel etc.) including class IV employees posted either at the headquarter of the Board or in the offices subordinate to the Board. In case it comes necessary to take work from such employees on holidays and rest days, compensatory off or holidays should be allowed to them. Such



compensatory off or holidays should be allowed to be accumulated be availed in the same calendar year after which the same will automatically lapse.

(ii) Overtime work shall also not be normally taken from the Factory workers. However, exemptions can be taken under the following conditions, and that too very rarely and when the necessity arises:-

(a) Firstly; when it becomes unavoidable for attending to urgent repairs, breakdown work and to cover absenteeism in shift operations. Leave to the operation staff should be managed in such a manner that no O.T. is required for the shift operator. Strict watch should be kept on habitual absentees.

(b) Secondly, limit of booking workers on overtime work will be limited to 50 hours per quarter after observing the formalities as laid down in Section 64 of the Factory Act, 1948.

(iii) Overtime return will be scrutinised by the General Manager-cum-Chief Engineers of the Area Board, Power Station and Transmission organisation.

(iv) In case of great exigency overtime may be allowed upto a limit of 75 hours in a quarter with a written permission from the Chief Inspector of Factories, Bihar as per provisions of Section 64 of the Factories Act.

2. The above decision will be adhered to. Any deviation from aforesaid instructions by the officers shall be at their own risk and cost and may expose them to disciplinary action”.

5. The overtime allowance is granted to specified categories of employees in terms of the Circular issued. *De hors* the Circular, an employee of the appellant is not entitled to overtime



allowance. It is to compensate the specified employees for working beyond normal working hours, when overtime allowance is granted. The overtime allowance is to be paid only in terms of the Circular issued. The finding of the learned Single Bench that such condition is violative of Articles 14 and 23 of the Constitution of India as work without payment is a form of forced labour is not sustainable. We are unable to agree with such finding as the writ applicant is not working without any payment. He is a regular employee. As a regular employee he is entitled to his salary and allowances. An employee retains its character for the entire period of service and not that he is only an employee limited for the duty hours. An employee is entitled to disciplinary proceedings if he commits any misconduct, beyond the duty hours and can be called for to perform any duty in the exigencies of administration. Therefore, it is not a case of taking work without payment, as has been held by the learned Single Bench. Since the Circular provides overtime allowance for specified categories of employees and in a particular manner, the employee will be entitled to overtime allowance only in terms of the Circular.

6. A question was posed to the learned counsel for the writ applicant as to whether an employee would be entitled to



overtime allowance *de hors* the Circular issued. There was no explanation to such query as the right to claim overtime allowance arises only out of the Circular and, therefore, the employee is not entitled to overtime allowance *de hors* the Circular issued. We find that the finding of the learned Single Bench holding the Circular of the appellant as violative of Articles 14 and 23 of the Constitution of India cannot be sustained.

7. Consequently, the Letters Patent Appeal is allowed.

The writ application is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

K.C.jha/-

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