

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.247 of 2017

IN

C. REV. 124 of 2016

- =====
1. The Bihar State Beverages Corporation Ltd., Patna through its Managing Director, Annexe Building, Vidute Bhawan, Bailey Road, Patna.
 2. The Managing Director.
 3. The General Manager (HR & Admin).

.... Appellant/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Excise, Government of Bihar, Patna.
4. The Chairman Public Enterprises Bureau, Government of Bihar, Patna.
5. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
6. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
7. The Principal Secretary, Department of Cane, Government of Bihar, Patna.
8. Amrendra Kumar Singh Son of Late Raghubir Singh Resident of Mohalla - Ashok Nagar, ward No-15, P.O - Koshi College, District - Khagaria.
9. Habul Baitha Son of Late Manager Baitha Resident of Village + P.O - Maraurha, District - Saran.
10. Pramod Kumar Son of Late Bharat Prasad Resident of Village + P.O + P.S - Maner, District Patna.
11. Pramod Baitha Son of Sri Kanchan Baitha Resident of at P.O + P.S - Ram Nagar, District - West Champaran.
12. Raja Ram Sahau Son of Sri Kashi Sahu Resident of Village + P.O - Shivrau, P.S- Bahera, District - Darbhanga.
13. Mani Bhushan Prasad Singh Son of Late Shiv Shankar Prasad Sinha Resident of Village + P.O - Manganpur, Via-Garaul, District - Vaishali.
14. Madan Kishore Pandey Son of Late Ram Shankar Pandey Resident of Mohalla - Bichchak Naya Tola, P.O- Anishabad, District - Patna.
15. Md. Enamul Haque Son of Md. Sadraul Hussain Resident of Village - Nurullahapur, P.O Daulatpur Via- Roseraghat, P.S - Kudawandpur, District - Begusarai.
16. Vijay Kumar Rai Son of Late Yugeshwar Rai Resident of Village Dhamani, P.O Vidyapati Nagar, P.S- Dalsinghsarai, District - Samastipur.
17. Amrendra Kumar Yadav Son of Late Ram Sevak Yadav Resident of at P.O + P.S Banmankhi, District - Purnea.
18. The Bihar State Sugar Corporation Ltd. through its Managing Director, Arunalay Ramjaipal Nagar, Bailey Road, Patna.
19. The Managing Director, Bihar State Sugar Corporation Ltd. Arunalay Ramjaipar Nagar, Bailey Road, Patna.

.... Respondent/s

with

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Letters Patent Appeal No. 945 of 2017

IN



Civil Writ Jurisdiction Case No. 21033 of 2014

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1. The Bihar State Beverages Corporation Ltd. through its Managing Director, Vidut Bhawan, Bailey Road, Patna.
 2. The Managing Director, Bihar State Beverages Corporation Ltd. Vidut Bhawan, Bailey Road, Patna.
 3. The General Manager (H.R & Adm), Bihar State Beverages Corporation Ltd. Vidut Bhawan, Bailey Raod, Patna.

.... Appellant/s

Versus

1. Amrendra Kumar Singh Son of Late Raghubir Singh Resident of Mohalla - Ashok Nagar, ward No-15, P.O - Koshi College, District - Khagaria.
2. Habul Baitha Son of Late Manager Baitha Resident of Village + P.O - Maraurha, District - Saran.
3. Pramod Kumar Son of Late Bharat Prasad Resident of Village + P.O + P.S - Maner, District Patna.
4. Pramod Baitha Son of Sri Kanchan Baitha Resident of at P.O + P.S - Ram Nagar, District - West Champaran.
5. Raja Ram Sahau Son of Sri Kashi Sahu Resident of Village + P.O - Shivrau, P.S- Bahera, District - Darbhanga.
6. Mani Bhushan Prasad Singh Son of Late Shiv Shankar Prasad Sinha Resident of Village + P.O - Manganpur, Via-Garaul, District - Vaishali.
7. Madan Kishore Pandey Son of Late Ram Shankar Pandey Resident of Mohalla - Bichchak Naya Tola, P.O- Anishabad, District - Patna.
8. Md. Enamul Haque Son of Md. Sadraul Hussain Resident of Village - Nurullahapur, P.O Daulatpur Via- Roseraghat, P.S - Kudawandpur, District - Begusarai.
9. Vijay Kumar Rai Son of Late Yugeshwar Rai Resident of Vilalge Dhamani, P.O Vidyapati Nagar, P.S- Dalsinghsarai, District - Samastipur.
10. Amrendra Kumar Yadav Son of Late Ram Sevak Yadav Resident of at P.O + P.S Banmankhi, District - Purnea.
11. The State of Bihar.
12. The Chief Secretary, Government of Bihar, Patna.
13. The Principal Secretary, Department of Excise, Government of Bihar, Patna.
14. The Chairman Public Enterprises Bureau, Government of Bihar, Patna.
15. The Principal secretary, Department of Industries, Government of Bihar, Patna.
16. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
17. The Principal Secretary, Department of Cane, Government of Bihar, Patna.
18. The Bihar State Sugar Corporation Ltd. through its Managing Director, Arunalay Ramjaipal Nagar, Bailey Road Patna,.
19. The Managing Director, Bihar State Sugar Corporation Ltd. Arunalay Ramjaipar Nagar, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lalit Kishore, Sr. Advocate
Mr. Vikas Kumar, Advocate
For the Respondent/s : Mr. Rakesh Narayan Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE



and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 19-07-2017

Seeking exception to an order dated 9.4.2015 and 16.11.2016 passed by the learned Writ Court in C.W.J.C. No.21033 of 2014 and Civil Review No.124 of 2016 respectively, this appeal has been filed under Clause 10 of the Letters Patent.

The respondent employees were originally working in the Headquarter of Bihar State Sugar Corporation. They were taken on deputation by the appellants herein, namely, the Bihar State Beverages Corporation Limited, Patna. However, they were repatriated to the parent Department and challenging the same the writ petitions in questions were filed. When the orders of repatriation were passed, the Bihar State Sugar Corporation was in the process of winding up and an exit plan was in existence to be given to the employees as a one time settlement for bringing to an end the employees' contract of service. The employees herein took the advantage of exit plan, i.e. one time settlement of their claims, with the Sugar Corporation and thereafter claimed that they should be continued in the appellant's organization. The learned Writ Court took note of various aspects of the matter and during the course of hearing in the writ petition, the Counsel representing the appellant made a statement that the appellant will have no difficulty in



retaining the petitioners till they attain the age of superannuation, i.e. 60 years, provided the appellant Corporation is not made liable to pay any past dues pending with the Sugar Corporation and they shall only be paid salary as a contract employee till they continue in service without any liability for payment of provident fund or any other benefit like leave encashment. Even though such statement was made, the learned Writ Court disposed of the matter directing the appellant Corporation to continue the petitioners in contract employment till they attain the age of superannuation, but at the same time vide direction No.2 and 3 at para 11 of the impugned order, directed for grant of benefit of leave encashment and provident fund.

Challenging this direction, these appeals have been filed after review application did not yield any result.

We find that the employees were on deputation and as a deputationist they had no right to continue with the foreign Department. They could have been repatriated back any time to the parent Department and in this case the parent Department suffered certain disability due to financial crunch and, therefore, it was in the process of winding up and therefore brought a scheme for one time settlement known as the exit plan and the petitioners took advantage of the exit plan. Once the petitioners' parent Department was being wound up and the petitioners took advantage of the exit plan, nothing



further remained to be done with regard to their claim with the Sugar Corporation. The petition was to be dismissed and the petitioners granted liberty to approach the parent Department with their claims, if any, for leave encashment. Once the petitioners were on deputation, the appellant herein had a right to send them back to the parent Department and petitioners having taken all the benefits of exit plan were not entitled to any further benefit.

However, once the appellant Corporation permitted them to continue as contract employees till the age of superannuation, it was an advantage granted to the employees by the appellant Corporation and the learned Writ Court, without appreciating the totality of the facts and circumstances of the case, as are detailed hereinabove, in spite of objection raised by the learned counsel for the appellant, granted benefit of provident fund and leave encashment also, which in our considered view could not be granted in the facts and circumstances of the case once the employees accepted the exit plan. A claim for provident fund and leave encashment is a claim with the erstwhile employer of the petitioner in the original writ petition, namely, the Sugar Corporation and the said liability could not be imposed upon the appellant Corporation once the appellant Corporation was a foreign Department which had taken the employees on deputation.

That being so, we are of the considered view that in



directing for settlement of the claim of the petitioners including provident fund and leave encashment, the learned Writ Court has committed an error and to that extent this appeal has to be allowed.

Accordingly, the appeals are allowed in part, the direction for grant of provident fund and leave encashment is quashed and liberty granted to the employees to raise the these claims with their erstwhile employer of the statutory Provident Fund Authority in accordance with law. The appellants are only liable to continue to keep the employees as a contract employee till the age of superannuation i.e. 60 years of age.

We may clarify that this order is confined to only to the petitioners who had filed the writ petition and not to any other employee. The order will govern only the parties who were contesting the matter in C.W.J.C. No.21033 of 2014.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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