# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.8367 of 2000**

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Ram Das Thakur, son of Late Basawan Thakur, resident of Mohalla-Hanuman Nagar, Maranpur, P.S.-Civil Line, District- Gaya.

.... .... Petitioner

Versus

1. The State of Bihar
2. Industrial Development Commissioner-cum-Secretary, Department of Industries, Government of Bihar, New Secretariat, Patna.
3. Special Secretary, Department of Industries, Government of Bihar, New Secretariat, Patna.
4. Director of Industries, Department of Industries, Government of Bihar, New Secretariat, Patna.

.... .... Respondents

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**Appearance:**

For the Petitioner/s : Mr. Prashant Sinha, Advocate
Mr. Rohan Verma, Advocate

For the State : Mr. Manoj Kumar, A.C. to S.C.-12

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

ORAL JUDGMENT

**Date: 27-02-2018**

Heard learned counsel for the petitioner and learned counsel for the State.

**2.** In the present case, the petitioner has sought various reliefs, such as, regularizing his service and pay accordingly. Second relief has been sought that he is entitled to the pensionary benefit as well as the Gratuity, Leave Encashment, arrears of salary for the period from 01.03.1994 till 30.04.1999 as per the scale of the Pay Revision Committee and further made a prayer that he should be given the amount of C.P.F. after deducting the contribution of the State Government.

**3**. Before going to the merit of the case, certain facts which are important has to be write down to understand the whole gamut of the controversy involved in the present case.

**4.** The Government of India constituted the Rural Industries Planning Committee vide the Planning Commission letter no.V.S.I.-08(6) / 61 which recommended programmes for intensive development of small industries in rural areas and small towns so as to create, maintain and expand non-governmental employment and in order to achieve the aforesaid objects, 47 rural Industries Projects were taken up for implementation of the Programmes. Initially in the State of Bihar, Gram Nirman Mandal, Shekhodoora (Nawada) and Bihar Khadi Gramoudyog Sangh, Pusa were entrusted with the formulation and implementation of the programmes. The two projects were centrally sponsored schemes and nucleous funds amounting to Rs.20 lakhs for each Project had been made available by the Government of India for the period 1962-63 to 1965-66 of the Third Five Year Plan and a specified amount for each project was required to be kept in reserve to meet the expenditure on strengthening of staff for managing increased volume of works at the Directorate Headquarters and for subsequent allocation according to need. The State Government with the approval of the Government of India decided to entrust wholly the execution of these two projects to the aforementioned two Non-Official Organizations and the State Government had to sanction and provide grants-in-aid. The State Government laid down the manner of utilization of grants-in-aid by the Non-Official Organizations in the letter dated 02.12.1987 by the Under Secretary to the Government of Bihar in the Department of Industries and Mines to the Accountant General, Bihar.

Following were the main aims and objects of the Projects:-

(i) To evolve effective techniques, methods and programmes which can be extended progressively to other areas of the State having large incidence of unemployment and under-employment.

(ii) to assist in the intensification of various programmes for the development of village and small industries, help in coordinating the functioning of various agencies, being about the fullest possible participation of financial and cooperative institutions, and the integrated development for the rural and industrial economy in terms of area of regional places. Converted efforts on the above lines said to achieve progressive extension of small industries to rural areas as a solution to the problem of unemployment and as one of the means of raising the standards of living.

(iii) Intensive and integrated development of small industries and of processing industries based on agriculture. They are to be implemented as part of a wider and well-coordinated plan of area of regional development.

(iv) Along with other measures, the Projects are intended to promote the development of a cooperative agro-industrial economy.

**5**. Government of India approved the proposal of the State Government for setting up the Rural Industries Projects to cover the District of Muzaffarpur in the Fifth Five Year Plan and the approval was communicated by the Under Secretary to the Government of India to the Secretary to the Government of Bihar in the Industries and Technical Education Department by the letter dated 02.07.1973 in which it was inter alia clarified that the approval was subject to the terms and conditions contained in the letter dated 25.03.1971 which was generally acceptable to the State Government and a further condition was imposed that the State Government had to implement these projects by the organization headed by Late Sri Jai Prakash

Narayan.

**6**. In the Government of India's letter dated 25.03.1971 it was provided that the Central Government would provide financial assistance for the programme to set up 50 new rural industries projects during the Fifth Five Year Plan for a period of five years only, after which the State Government will have to run the Projects on its own so that the Central assistance becomes available for the new series of Projects in the subsequent Five Year Plans. It was further mentioned that the Central assistance to the State Government in regard to the new projects will be limited to the entire cost of establishment particularly staff for service, research extension, pilot projects, demonstration and also some loans for a period of five years from 01.04.1974 and at the end of five years i.e. 31.03.1979, the Central assistance for the projects in the second series will be withdrawn and the State Government will have to run the projects on their own.

**7**. It is in this background that the State Government, keeping in view of the communication of the Government of India and their letter dated 02.07.1973, decided that the Rural Industries Projects would be executed by the Muzaffarpur Development Authority and sanction was accordingly accorded for the period from 01.09.1973 to 31.03.1979 by the State Government vide their letter dated 08.01.1974.

**8**. The petitioner was appointed in the year 1964 as Economic Investigator in the Rural Industries Project, Nawada, and accordingly, he joined on 20.07.1964 and the Government of Bihar decided to merge the Rural Industries Project to District Industries Centre vide letter dated 11.05.1978 and it was mentioned therein that the merger will include the employees also. Accordingly, the petitioner became the employee of the District Industries Centre, Gaya. This new development was informed by the Joint Secretary to Accountant General, Bihar, vide letter dated 11th May, 1978 (Annexure-4) therein it has been mentioned that the employee of the Rural Industries Centre will be merged with the District Industries Centres along with the employees and the petitioner later on, with effect from 10.04.1992 promoted to the post of General Manager, District Industries Centre in the pay scale of Rs.300-4500/-. The District Industries Centre, Gaya, along with Muzaffarpur Industries Centre were taken over by the Government without its employees on 28.02.1994 and that created a heart burning to employees who were working there, they approached this Court in C.W.J.C. No. 3066 of 1994 and after detailed discussion on the facts and on law the Court was of the view that they continuously discharged the duty of the Centre and the principle of promissory estoppel will be applicable against the Government and also held that the Government is required to act fairly placing reliance on the judgment of *Motilal Padampat Sugar Mills Co. Ltd. vs. The State of Uttar Pradesh and Others,* reported in *A.I.R. 1979, S.C. 621* on the principle of promissory estoppel as well as the principle of fairness in action of the Government was taken note from the judgment of *K.I. Shepard and Ors. vs. Union of India and Other*, report in *A.I.R. 1988, S.C. page-686*, where the Hon'ble Supreme Court has held that it is expected from the Government to behave fairly and properly, arbitrary and whimsical action is not acceptable to the rule of law and ultimately arrived to the conclusion as follows:-

> *"Accordingly, the State Government is directed to take over the services of the petitioners and absorb them in Government Service on such terms and conditions as are applicable to the officers and employees working in other District Industries Centres which are being run and managed by the State Government and it shall be open to the State Government to retrench or terminate the services of the petitioners in accordance with law if the circumstances so warrant and until the petitioners continue in service and the State Government does not absorb them they shall continue to receive the same employments including the arrears of salary, if due, which were being paid to them prior to 28.02.1994 and the directions in the impugned order (Annexure-1 to the C.W.J.C. No.3712 of 1994) to the contrary are set aside.*

*The writ petitions are allowed to the extent indicated above, but there shall be no order as to costs."*

**9.** So two alternatives have been given to the Government either to absorb the service of the petitioner in terms of other employees of District Industries Centres, in case of contrary view is taken by the Government, was also given the liberty to retrench/terminate the services in terms of the law. When the petitioners were not given the benefit of regularization as has been given to other employees of District Industries Centres, the present writ petition has been filed. During the subsistence of the present writ petition, the Government has come out with a notification no.396 dated 03.03.2003 and accordingly, the services of the petitioner has been regularized with effect from 20.02.1994.

**10**. In the present case, grievance has been raised by the petitioner that as he was appointed in the year 1964, for all purposes the District Industries Centre was under the control of the State Government. The organization was created for the purposes of rural industrial growth with a view to generate non-governmental, non-agricultural employment, and with this thrust, the money was given to the different societies but most of the Officers of the Society were nominated by the State Government. So, if the Government has absorbed the services of the petitioner, then he is entitled, his past services would be taken into consideration atleast notionally to make him entitled for the pension, gratuity and other retiral benefits. It has further been argued that all money was provided by the Government, the management was under the control of the State Government or the Central Government; appointments were made as per the norms set by the State Government within the staffing pattern. If these controls along with the finance are coming from the Government, in such circumstance, depriving the petitioner from the benefit of the past services is inequitable and it is against to the rule of law.

**11**. It has further been argued that the petitioner has been deprived of the Gratuity. Had the Organization not been taken over certainly he would have been entitled to grant gratuity in terms of the Payment of Gratuity Act, where prescription of year of service for being eligible is less then Bihar Pension Rules. He further submitted that common facilities service centres which were also a part of the Rural industries Project was taken over by the Government and the past services of the employees of the said Rural Industries Project were counted. He further submitted that the status of the employees of the District Industries Centre, Nawad, is the same as that of the present petitioner and when they have been granted the facility of counting the past services, then the petitioner cannot be deprived of the same.

**12.** He has further placed reliance on the order passed by this Court in Division Bench, in L.P.A. No.716 of 2017, in which the past services of the employee of the Corporation, which was taken over by the State Government, have been taken into consideration for all purposes.

**13**. In contrary, learned counsel for the State submits that it was completely a privately managed body though the money was given by the State Government but that will not change its corporate colour and it was a corporate body not a Government organization, they were created under the Societies Registration Act, in third and fourth Five Year Plan the policy was for the Rural industrialization, the money was given to generate the Non-Governmental employment and further he has stated that all aspects have been taken into consideration in C.W.J.C. No. 3066 of 1994, in which the petitioner himself is a party and the Court in different paragraph has recorded that it is a non-government body and it was privately managed body getting the grant-in-aid from the Government. He further submits that in the last portion the Court has directed for regularization.

**14.** Both the parties have accepted in the earlier verdict, there itself, it has been mentioned that the benefit which has been given to the employees of other District Industries Centres, will be given to the present petitioner also. In such circumstances, variation of relief as has been claimed by the petitioner will upset and make a *topsy turvy* because those who have been regularized in 1983, in their case, past service was not counted, there may be a sympathy for the petitioner, may also have equity, but in view of the fact that in earlier matter, past service has not been counted inasmuch as the petitioner has been regularized, in such circumstance, past service cannot be considered in other centres such benefit of past service has not been conferred.

**15**. It an admitted fact that when the petitioner was appointed, the District Industries Centre was being run by privately managed body though the certain Governmental Officers were sent on deputation to the society but that will not change its corporate colour and will not make it as Government body. Further it is very clear from the earlier judgment, in different paragraphs, this Court has held that it is a privately managed body which was never challenged anywhere and the factual backgrounds also reflects that earlier the Central Government was participating in generating the employment, but after 10 years under the agreement it become the baby of the State Government, accordingly, the District Industrial Centres was running and later on, the Government has taken over the

District Industries centres without its employee, but they have succeeded in their claim for regularization of service in the State Government, but while giving the benefit, this Court has made it very clear that the same benefit as that of other District Industries Centres will be given to the petitioner also. Second problem lies there, the petitioner has been given some retiral benefits on his superannuation from the service and at the same time the learned counsel for the State is right, the question would arise why the benefit of past services was given to the employees of the District Industries Centres, Darbhanga, who were also regularized in service. Certainly it will change the whole spectrum and it will open the flood-gate, all the retired employees will rush and will claim that they are also be entitled to the pension.

**16**. In such view of the matter, this Court only holds that if the employees of other District Industries Centres have been given the benefit of pension or Gratuity, the State would extend the same benefit to the petitioner also. As the petitioner has already absorbed in 1994 and superannuated in 1999 whatever the difference of amount comes on account of applicability of the Pay Revision Committee Report that should be given to the petitioner and he should be given the arrears of salary for the period he has worked. He will also be given the Leave Encashment to the extent of his entitlement, accordingly, the payment should be made. While calculating the arrears of salary and Leave Encashment the period which he has discharged the duty after taking over will be taken into consideration. If already the contribution of C.P.F. with respect to Government contribution has not been paid, that should be paid along with statutory interest. All the exercise should be completed within a period of six months from the date of receipt/production of a copy of this order.

**17**. With the aforesaid observations and directions, this writ petition is disposed of.

**(Shivaji Pandey, J)**

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