

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.87 of 2013

In

Civil Writ Jurisdiction Case No.4589 of 2012

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Randhir Kumar Singh, S/O Late Raghubansh Singh, Resident of Village-Rasalpura, P.S.- Doriganj, District- Saran At Chapra, At present posted as SGT. 46 Wing, Air Force (Tech Fit.), Air Force Station, Nal, Bikaner (Rajasthan)

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary Land Reforms Department, Bihar, Patna
2. The Divisional Commissioner, Saran Division at Chapra
3. The District Magistrate, Saran at Chapra
4. The Regional Development Officer-Cum-Secretary to Commissioner, Saran Division at Chapra
5. The Additional Collector, Saran at Chapra
6. The Dy. Collector, Land Reforms Sadar, Chapra, Saran
7. The Circle Officer, Sadar Block, Chapra

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Advocate
For the State	:	Mr. D.K. Prasad, G.P. 14
		Mr. Md. Faiz Ahmad, A.C. to G.P. 14

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-01-2018

Seeking exception to an order dated 12.12.2012 passed by the learned Writ Court in C.W.J.C. No. 4589 of 2012 this appeal has been filed under Clause 10 of the Letters Patent.

Appellant was working as an In Service Airman. He claimed settlement of land in accordance to a policy decision of the State Government contained in Memorandum No. 4725 dated 14/16.8.1972 (Annexure-7). Clause 2 of the aforesaid



circular contemplated various provisions for allotment of land to such persons. Clause 2(K) dealt with grant of benefit to such persons who are in service and were entitled for settlement and Clause 2(Gha) dealt with the policy for grant of land to retired personnel, namely, ex servicemen. By an amendment made on 24th of August, 1990 the provisions of Clause 2(Gha) were amended and it was stipulated that even for a retired army personnel or ex serviceman, their claim would be considered as is to be considered in the case of in service personnel, subject to the condition that the retired person is a landless person.

Applying this amendment to Clause 2(Gha) incorporated on 24.08.1990, the claim of the appellant was rejected and the learned Writ Court having upheld the same, this appeal.

The ground canvassed before us was that in case of an in service candidate the consideration has to be made under Clause 2(K) and the amended provision of Clause 2(Gha), which related to a retired personnel, could not be made applicable.

Having heard learned counsel for the parties, we find that the contention of the appellant is correct. As indicated hereinabove, the circular provides various incentives to persons



who are in service, who are retired from service and certain categories of persons working in the Border Security Force and other ancillary services. As far as Clause 2(K) is concerned, it deals with grant of benefit to personnel who are in service and stipulates that they will be entitled to land under such conditions. There is nothing in Clause 2(K) to suggest that an in service personnel will be debarred from getting benefit of the policy in case he is a landed person or has any land in his favour. On the contrary, Clause 2(Gha), which was amended on 24.08.1990, carved out an exception in the case of a retired person to say that they have to be landless persons to receive the benefit of this policy. In our considered view, the amendment brought into force with respect to Clause 2(Gha) stipulating a condition with regard to a retired person being a landless person cannot be applied in case of an in service candidate as nothing in Clause 2(K) indicates so and the amendment is not made to Clause 2(K), therefore, an amendment made in Clause 2(Gha) cannot be read to be an amendment in Clause 2(K) also. This error having been committed by the departmental authorities and the learned Writ Court, we allow this appeal, quash the order passed by the Writ Court and the departmental authorities, impugned in the writ petition, being Annexure-12 dated



28.04.2012 and remand the matter back to the Government for reconsideration in accordance to the unamended provision of the policy i.e. Annexure-7 dated 14/16.08.1972. The matter be reconsidered and a decision taken within a period of three months.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

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