IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1342 of 2017
IN
Civil Writ Jurisdiction Case No. 5358 of 2017

==

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation Fraser Road, Patna.
3. The Consultant I/C (P&A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Appellant/s

Versus

Upendra Lal Karn Son of Late Pancheshwar Lal Das, Resident of Urvashi Apartment, New C.G. Nagar, P.S.- Patrakar Nagar, Kankarbagh, District- Patna.

.... Respondent/s

with

==

Letters Patent Appeal No. 1343 of 2017
IN
Civil Writ Jurisdiction Case No. 9671 of 2014

==

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Deputy Manager (P & A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Appellant/s

Versus

1. Smt. Shukunta Devi, Wife of late Krishna Ram Resident of Mohalla Gosain Tola, Near K.D.N. Path, Post and P.S. Patliputra , District Patna (Bihar).
2. Smt. Sunita Devi D/o Late Krishna Ram and W/o Sri Manoj Kumar Resident of Moh. New Harnichak, Near Sargam Sweet, Post Anisabad, P.S. Gardanibagh, District Patna (Bihar)
3. Sanjay Kumar
4. Anand Kumar
5. Arvind kumar

All Sons of Late Krishna Ram Resident of Mohalla Gosain Tola, Near K.D.N. Path, Post and P.S. Patliputra , District Patna(Bihar)

.... Respondent/s

With

==

Letters Patent Appeal No. 1344 of 2017
IN
Civil Writ Jurisdiction Case No. 8203 of 2014

==

1. The Bihar State Financial Corporation, Frazer Road, Patna through its Managing Director
2. The Board of Directors, Bihar State Financial Corporation, Frazer Road, Patna through its Chairman.
3. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna
4. The Deputy Manager, Bihar State Financial Corporation, Frazer Road, Patna

.... Appellant/s

Versus

1. Yugeshwar Prasad Singh son of Late Rajendra Singh, permanent resident of village- Bahasi, P.S.- Mahua, District- Vaishali at Hajipur
2. Surajdeo Prasad, son of Late Guru Charan Ram, resident of village- Kurchi Balavpur, P.S.- Digha, District- Patna
3. Bishwanath Roy, son of Late Gopal Chandra Roy, resident of Mohalla- Gulabbagh Market, P.S.- Gandhi Maidan, District- Patna
4. Md. Anwarul Haque Ansari @ Md. Anwarul Haque son of Late Reyazul Haque, resident of Mohalla- Fasahat Ki Maidan, P.S. Patna City, District- Patna

.... Respondent/s

with

==

Letters Patent Appeal No. 1345 of 2017

IN

Civil Writ Jurisdiction Case No. 8696 of 2014

==

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Deputy Manager (P&A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Appellant/s

Versus

Vibhutinatha Jha, Son of Late Viswanath Jha, Resident of 292, Indiralaya, Opposite Stadium, Rajendra Nagar, P.S. Kadamkuan, District Patna.

.... Respondent/s

==

Appearance:

(In LPA Nos.1342 of 2017, 1343 of 2017, 1344 of 2017, 1345 of 2017)

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate and Mr. Nikhil Kumar Agrawal, Advocate.
For the Respondent/s	:	Mr. Manik Vedsen and Mr. S.C. Bose, Advocates.

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 09-03-2018

Challenge in this batch of intra-court appeals is to a common judgment dated 25.05.2017 passed by a learned Writ Court in CWJC No. 8203 of 2014 and three other analogous Writ Applications.

2. By the impugned judgment the learned Writ Court having considered the submissions of the parties materials available on the record recorded that the decision of the respondent Corporation to calculate the leave encashment / earned leave payment of the petitioner(s) on the basis of broken service in two stages, i.e., on retirement at the age of 58 years and the second stage of retirement at the age of 60 years cannot be held to be legal and justified. The learned Writ Court also held that the action of the Corporation (appellant herein) in holding back certain amount of gratuity from the balance received from the L.I.C. in the name of petitioner(s) cannot be justified and, therefore, the learned Writ Court set aside the impugned orders passed by the respondent authorities whereby the claim of the petitioner(s) for payment of balance leave encashment as per revision in salary in the Corporation on the date of retirement of the petitioner(s) on attainting the age of 60 years and payment of deducted amount of gratuity payable on the revised scale of pay were rejected. The learned Writ Court has directed the authorities of the Corporation to calculate encashment of earned leave of the petitioner(s) on the basis of their actual date of retirement and pay the balance admissible amount to the petitioners. A further direction has been issued to the respondents to release the amount deducted from gratuity paid to the petitioner(s) second time, even though the

Corporation submitted that had had returned the same to the L.I.C. to meet the shortfall in the fund.

3. Learned counsel representing the Bihar State Financial Corporation (hereinafter referred to as ‘the Corporation’) / appellant submits that the impugned judgment of the learned Writ Court has not taken into consideration that the petitioners in these Writ Applications were made to retire at the age of 58 years, which was the age of superannuation at the relevant time. It is his case that since the petitioner(s) were allowed to join back because of judicial intervention and direction, they were not paid the salary for the period they had not rendered their duty but again by virtue of the order passed by the Court, the Corporation was made liable to pay salary to the employees of the Corporation for the period they were kept out of job before attaining 60 years of age. He submits that the Corporation vide its Office Order no. 07 of 2012-13 dated 04.03.2013 took a decision to the effect that the ex-employees of the Corporation who had retired at 58 years of age and attained the age of 60 years prior to the issuance of the order of enhancement of retirement age and such employees who retired at the age of 58 years but resumed their duties during the intervening period were allowed admissible salary and allowances (except conveyance allowance) for the period they were out of service. It is further case of the Corporation that pursuant to the

said decision, all admissible dues were paid to the petitioner(s) in the light of the decision of this Court in CWJC No. 1324 of 2011 (Yogeshwar Prasad Singh's case). The main contention of the learned counsel representing the Corporation / appellant is that having accepted all the admissible dues, the writ petitioners could not have raised an issue of non-payment of admissible dues, such as, (i) payment of lesser amount of leave encashment and (ii) payment of lesser amount of gratuity.

4. Learned counsel submits that the learned Writ Court could not appreciate that the writ petitioner(s) were already paid the admissible salary and all authorized amount for the period they were out of service and the learned Writ Court could not appreciate that they had not returned the amounts received from the respondents (present appellants) after their superannuation at the age of 58 years and, therefore, they have enjoyed interest over the said amounts.

5. Learned counsel representing the appellants further submits that as regards the payment of gratuity which is maintained by the L.I.C. in form of Group Gratuity Fund, the learned Writ Court could not appreciate that a major deficiency / shortfall occurred in the said fund as the same amount was not returned back to the Corporation and the panel officers were prematurely benefited to some extent. He submits that these aspects of the matter have not been

considered by the learned Writ Court.

6. On the other hand, learned counsel representing the private respondents in all Letters Patent Appeals vehemently submits that the Corporation / appellants is in habit of indulging in litigation and they are treating it as luxury in an otherwise financial crippled Corporation. Learned counsel points out from the records that right from beginning the Corporation is taking illegal and arbitrary decisions one after another. At first instance, the private respondents were illegally made to superannuate at the age of 58 years when there were already a resolution of the Corporation taken on 25.08.2006 whereunder the benefit of enhancement of the age of superannuation as provided by the State Government to its employees w.e.f. 24.03.2005 were also extended to the employees of the Corporation / appellants but despite the said resolution dated 25.08.2006 these writ petitioners were made to retire.

7. The Employees Federation had to move this Court by fling a Writ Application in the Jharkhand High Court at Ranchi and after dismissal of the said Writ application the Employees Federation had to prefer a Letters Patent Appeal being LPA No. 83 of 2007 in the Hon'ble Jharkhand High Court at Ranchi. It is during pendency of this L.P.A. that the Corporation continued to superannuate its employees, who had attained 58 years of age but ultimately on final hearing LPA

No. 83/2007 was allowed by the Hon'ble Jharkhand High Court vide order dated 22.04.2009. Our attention has been drawn towards the operation of the stay order which has been quoted in paragraph 10 of the impugned judgment.

8. Learned counsel pointed out that a Civil Review application preferred by the Corporation and subsequent Special Leave Petition before the Hon'ble Supreme Court were dismissed *in limine*. The petitioner(s) after dismissal of the S.L.P. submitted their joining reports. It is only on 19.04.2010 that the Corporation issued a standing order whereby they decided to enhance the age of superannuation from 58 to 60 years w.e.f. 25.08.2006. After issuance of the standing order dated 19.04.2010, the petitioner(s) were allowed to join back as they had not attained the age of 60 years and further they were allowed to superannuate on attaining the age of 60 years.

9. Learned counsel submits that there had been another round of litigation for these private respondents who had to move this Court for payment of their salaries as the Corporation was not allowed the same. A reference has been made to the order passed by this Court in CWJC No. 1324 of 2011. It is also stated that LPA Nos. 1656/2011 and 1816/2011 preferred against the judgment of the Writ Court were dismissed and thereafter challenge to the same before the Hon'ble Supreme Court also failed. It is for these reasons that learned counsel

submits that the Corporation has been harassing the private respondents by entering into litigation one after another even for the genuine cause of the private respondents.

10. At this stage, learned counsel submits that the Writ Court has rightly held by the impugned judgment that there cannot be two retirement dates of a government employee or in a government establishment. If the writ petitioner(s) were entitled to superannuate only on attaining the age of 60 years and they were wrongly retired at the age of 58 years, the Corporation / appellant cannot take any benefit whatsoever arising out of their own illegal act in retiring the writ petitioner(s) at the age of 58 years. The decision of the respondent Corporation to calculate the leave encashment amount on the basis of broken service of two stages, according to the learned counsel, has been rightly held to be illegal. He also submits that the learned Writ Court is correct in directing the Corporation / appellant to pay back the amount deducted from the gratuity amount.

11. We having hearing learned counsel for the parties and upon perusal of the records come to a considered opinion that there is no illegality or infirmity in the impugned judgment of the learned Writ Court. From the narration of facts and events stated hereinabove, it is evident that these writ petitioners were made to retire at the age of 58 years even though they should have been retired at the age of 60

years. By virtue of judicial orders and intervention they got restored to their position and received salaries for the said period also. The learned Writ Court is correct in saying that there cannot be two retirement dates of a government employee or in a government establishment. What has been done in the present case by the respondent / appellants is that they have calculated the payment of earned leave taking two broken service period in two stages, i.e., on retirement age of 58 years and retirement at the age of 60 years. This is unknown to service jurisprudence and has been rightly held so by the learned Writ Court, the date of retirement of the writ petitioners are liable to be taken as on the date they attained the age of 60 years and on the said date of retirement whatever rule prevailed with regard to the maximum days for encashment of leave will be fully applicable to the writ petitioners.

12. The learned Writ Court has rightly come to a conclusion that the action of the Corporation in holding back certain amount of gratuity from the balance received from the L.I.C. in the name of petitioners cannot be justified. Here we find that the Group Gratuity Fund is maintained by the Corporation / appellant by virtue of an agreement entered into between the Corporation and the L.I.C. of India whereunder the Corporation has to make contribution for its employees in terms of the scheme of the L.I.C. so as to take care of

their liabilities on account of gratuity when an employee retires. It appears from the statements in the Letters Patent Appeal itself that a sum of Rs. 23,758/- was deducted from the gratuity paid to the beneficiary second time because they had been a shortfall in the Group Gratuity Fund. We understand that the shortfall which occurred in the Group Gratuity Fund was because of non-payment of contribution on account of these writ petitioners by the Corporation / appellants to the L.I.C. For this shortfall, the writ petitioners cannot be held liable and they cannot be made to suffer by way of deduction of salary of Rs. 23,758/- from their lesser dues on account of gratuity.

13. The direction of the learned Writ Court in the facts and circumstances of the present case is wholly correct and need no interference at this stage. The Letters Patent Appeals are, therefore, dismissed.

14. The Corporation / appellant shall comply with the order of the learned Writ Court within a period of three months from the date of receipt / production of a copy of this order.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.03.2018
Transmission Date	N/A