IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15159 of 2008

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Shreedhar Choudhary, son of Late Tarni Prasad Choudhary, resident of village and post- Motia, P.S.- Godda, District- Godda in the State of Jharkhand.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director Handloom and Handicraft Corporation, New Secretariat, Patna.
3. Director Industries Department, Government of Bihar, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Bihar, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 15746 of 2008

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Siya Ram Lakhan Prasad, son of Late Jai Kishun Prasad, resident of C/O Girish Lal, P.S.- Civil Line Bahuar Chaura, P.O.- Chand Chaura, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director Industries Department, Government of Bihar, Patna.
3. Director Handloom and Handicraft Corporation, New Secretariat, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Bihar, Bir Chand Patel Path, Patna.
6. District Provident Fund Officer, Gaya.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 16920 of 2008

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Shiv Pujan Singh, son of Late Madho Singh, resident of Mankamna Nath Mandir Road, Nath Nagar, P.O.- Nath Nagar, District- Bhagalpur.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director Industries Department, Government of Bihar, Patna.
3. Director Handloom and Handicraft Corporation, New Secretariat, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Bihar, Bir Chand Patel Path, Patna.
6. District Provident Fund Officer, Bhagalpur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 16941 of 2008

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Ram Chandra Gour, son of Late Bhagwan Das Gour, resident of village and Post- Bishnupath Road, P.S.- Civil Line, District- Daya.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director Industries Department, Government of Bihar, Patna.
3. Director Handloom and Handicraft Corporation, New Secretariat, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.

5. The Accountant General, Bihar, Bir Chand Patel Path, Patna.
6. District Provident Fund Officer, Gaya.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 16985 of 2008

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Ram Ratan Gour, son of Late Raghunath Gour, resident of Village and Post-Pattharkatti, P.S.- Batham, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director Industries Department, Government of Bihar, Patna.
3. Director Handloom and Handicraft Corporation, New Secretariat, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Bihar, Bir Chand Patel Path, Patna.
6. District Provident Fund Officer, Gaya.

.... Respondents

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Appearance :
(In CWJC No.15159 of 2008)
For the Petitioner/s :

For the Respondent/s :

(In CWJC No.15746 of 2008)
For the Petitioner/s :

For the Respondent/s :

(In CWJC No.16920 of 2008)
For the Petitioner/s :

For the Respondent/s :

(In CWJC No.16941 of 2008)

For the Petitioner/s :

For the Respondent/s :

(In CWJC No.16985 of 2008)
For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-04-2018

Heard learned counsel for the petitioners, State and Handloom and Handicraft Corporation Limited (hereinafter referred to as the 'Corporation').

2. The petitioners have moved the Court for a direction to pay retiral benefits including pension.

3. The petitioners were initially appointed under the State Government but upon creation of the Corporation, their services were transferred. As they were temporary employees even under the State Government, the transfer order stated that within one month they be given notice and their service terminated. However, it appears that the Corporation never gave them notice and, thus, they continued and also got payment till they attained the age of superannuation. Now they have prayed for pensionary benefits.

4. Learned counsel for the petitioners submitted that once the petitioners were appointed under the State and transferred to

the Corporation, their services could only have been terminated after giving them one month notice which admittedly has not been done. It was submitted that once the petitioners have been allowed to continue under the Corporation till the date of superannuation, they are required to be paid post retiral benefits, including pension. It was submitted that in the case of similarly situated persons the matter travelled to the Hon'ble Supreme Court and by judgment dated 02.08.2007, it was held that since no notice was given to them and their services were not terminated, they were entitled to retiral benefits.

5. Learned counsel for the State and Corporation submitted that the petitioners were first of all in temporary service under the State and more importantly even the period for which they were working under the State does not qualify for pension. Learned counsel submitted that once the temporary employees were transferred to the Corporation, it is for the Corporation to deal with them and the State cannot be fastened with any liability post such transfer. It was submitted that in the present case, admittedly, the petitioners were temporary employees of the State and their services were transferred to the Corporation without them having put in the minimum qualifying period required for grant of pension etc. by the State.

6. Having considered the matter, the Court finds that

the petitioners cannot be held entitled to pension by the State for the entire period of their service. They having been appointed on a temporary basis under the State, at best can claim for pensionary benefit for the period they were under the employment of the State. Once their services were transferred and them being temporary employees, the master servant relationship, as far as the State is concerned, came to an end. Thus, from such time, they became employees of the Corporation and even if the discretion given to the Corporation to terminate their services after one month notice was not complied, the liability would be of the Corporation and not the State. However, for the period which they have worked under the State, the same, in principle and technically, would carry the benefit of payment of retiral dues, but subject to the condition that the requirements for grant of such pension are fulfilled. This has to be gone into individually with regard to each petitioner and only if it is found that for whatever period they had actually worked under the State, if it qualifies, as per the statutory provisions in this regard, for grant of retiral benefits, the same shall be payable by the State.

7. As far as the order of the Hon'ble Supreme Court is concerned, in the order itself the reasoning given for having allowed the appeal in favour of the employees was that later on, even after transfer of their services to the Corporation there were orders of

confirmation in their favour and the same read with the condition of transfer to the Corporation, as contained in notification date 13th August, 1975, would shift their status, as they had been made permanent/their services regularized with effect from their initial date of appointment. Thus, they having moved into the category of regular employees, on the date of such transfer, even as per the clarification by the State Government in the Department of Industry as contained in letter no. 4509 dated 22.11.2000 that only such category of employees who were permanent under the State, upon such transfer, their services would be considered as deputation on foreign service and in their case the State would pay the retiral dues for the entire service period, but in cases of temporary employees who were never regularized or made permanent under the State, such employment under the State ceased upon their services being transferred to the Corporation and would not be entitled to pension, and further that even with regard to such employees if the period of service under the State was for more than 15 years, the State Government would pay the retiral benefits for such period and in that proportion. Thus, this being the basic difference in the case before the Hon'ble Supreme Court and the Hon'ble Supreme Court also specifically relying upon this aspect and that the State had confirmed their services with effect from their initial date of appointment, they had been directed to be given pensionary benefits counting their entire length of service. In the present cases, that being the basic difference, once the temporary employees were transferred, the liability of the State ceases upon such transfer and it is for the Corporation to decide about their conditions of service, including payment of any pensionary benefits. Further, as the Court has been informed that the Corporation is in the process of liquidation before the appropriate forum, the petitioners, if they choose, are required to move before such forum for any claim on the Corporation.

8. However, as has been earlier held in the order, if the period spent in service under the State by the petitioners qualifies for pension in terms of the relevant rules as also the clarification by the Industries Department in its abovereferred letter dated 22.11.2000, they shall be paid such pensionary benefits, in accordance with law, by the State.

9. All writ petitions stand disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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