

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.463 of 2017

In
Letters Patent Appeal No.113 of 2013

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Bihar Rajkiya Nalkoop Karmchari Sangh, through its General Secretary,
Ramesh Prasad Singh, son of Late Bhuneshwar Prasad Singh, Resident of
Village- Narang Rampur, Police Station- Narang Rampur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner-cum-Secretary, Finance Department, Govt. of Bihar, Patna.
3. The Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
4. The Under Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
5. The Project Co-Ordinator, Tube Well Prabhag, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Ms. Smriti Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-04-2018

This application has been filed for review/recall of an order passed by a coordinate Bench of this Court on 04.03.2016 in L.P.A. No. 113 of 2013. Review is sought to the limited extent of denying A.C.P. Scale to daily wages or work charged employees and the act of the employer in not accounting the service rendered by them prior to regularization for grant of A.C.P. Scale.

In the order passed by the Division Bench under



review on 04.03.2016 in Paragraph 4 it has been held that the third category of daily wages and work charged employees who were working in the Water Development Corporation, their claim for counting the period prior to their regularization cannot be accepted for the purpose of grant of A.C.P. Scale. In Paragraph 4 and thereafter in Paragraph 6 the learned Division Bench has held as under:-

“4. However, in respect of third category of daily wages or work charge establishment in the Water Development Corporation, we find that such claim is not tenable for the reason that a daily wager or a work charge employee prior to regularization cannot be treated to be an employee of the State entitled to A.C.P. Scale. The relation of employer and employee governed by Rules would come into existence only appointment on substantive basis.

6. In view of the said fact, the order passed by the learned Single Bench granting A.C.P. scale to the third category is set aside. The Letters Patent Appeal is partly allowed. The grant of A.C.P. scale to the daily wager or work charge establishment's employees prior to regularization is not sustainable.”

Our attention is invited to the statutory A.C.P. scheme formulated by the State Government and explanation and amendment to the scheme particularly Clause 4(IIक)



incorporated with effect from 23.03.2006, which reads as under:-

“4(IIक) नियमित कार्य भारत कर्मचारियों को ए.सी.पी. प्रोन्नति के लिए कार्य भारत सेवावधि की गणना की जायेगी।”

It is argued by learned counsel that once the rule provides for counting of the period of work discharged in a daily wages capacity or a work charged capacity for the purpose of grant of A.C.P., the aforesaid finding recorded by the learned Division Bench in Paragraphs 4 and 6 is contrary to the scheme, namely, A.C.P. Scheme, 2003, amended from time to time. Accordingly, learned counsel argues that there is an error apparent on the face of the record, inasmuch as, the L.P.A. was decided without taking note of the aforesaid statutory provision.

Finding there to be an error apparent on the face of the record in the matter of denying benefit to certain categories of employees which has resulted due to non-consideration of the statutory scheme, it is a fit case where the application should be allowed.

Accordingly, the application is allowed in part. The order passed dismissing the writ petition by allowing the L.P.A. of the State Government to the extent of denying counting of service rendered by a daily wages employee or a work charged



employee for the purpose of grant of A.C.P. scale alone stands recalled and to that extent L.P.A. No. 113 of 2013 is restored to its original file. Consideration made with regard to Category 1 and 2 employees and dismissal of the L.P.A. to that extent is not being interfered with or recalled in this order. The observations made with regard to applicability of the rules are provisional only for considering the question of review/recall. The issue on merit shall be considered at the time of hearing of the Letters Patent Appeal. The Letters Patent Appeal stands restored to that extent. It be now placed for orders before the appropriate Bench.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
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