

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1696 of 2017
In
Civil Writ Jurisdiction Case No.15527 of 2017

1. Vijay Kumar Singh son of Late Babu Ram Singh, R/o village- Malaypur (Kothua), P.S.- Malaypur, District- Jamui
2. Mahendra Sharma son of late Durga Sharma, R/o West Mohan Bigaha, P.S.- Dehri-on-Sone, District- Rohtas
3. Arjun Prasad, son of late Satya Narayan Prasad, R/o Mohalla- Dilawarpur, P.S.- Munger, District- Munger
4. Md. Samsuddin @ Samsuddin Khan, son of late Nazir Khan, residing at Ladli Manzir, near Lal Kothi, Muslim Nagar, Mohalla- Muslim Nagar, P.S.- Daltonganj, District- Palamau (Jharkhand)
5. Lakshman Mandal, son of Late Babu Lal Mandal, resident of Mohalla Pali, P.S.- Dehri-On-Sone, District- Rohtas

..... Appellants

Versus

1. Sone Command Area Development Agency through Its Secretary, Sone Bhawan, Daroga Prasad Rai Path, Patna
2. Chairman, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna
3. Secretary, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna
4. Executive Engineer, Sone Command Area Development Agency, Khagaul, District- Patna
5. Executive Engineer, Sone Command Area Development Agency, Bhojpur at Arrah
6. Executive Engineer, Sone Command Area Development Agency, Bhabua, District- Kaimur
7. Executive Engineer, Sone Command Area Development Agency, Dehri-On-Sone, District- Rohtas
8. Executive Engineer, Sone Command Area Development Agency, Aurangabad, District- Aurangabad
9. Chief Estate Officer, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna

.... Respondents

Appearance :

For the Appellants	:	Mr. Amit Shrivastava, Advocate Mr. J. K. Pandey, Advocate Mr. Girish Pandey, Advocate Mr. Mirtujay Kumar, Advocate
For the Respondents	:	Mr. Naresh Dixhit

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



ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 16-07-2018 Challenge in the present Letters Patent Appeal is to the judgment dated 07.11.2017 passed by learned Writ Court in Civil Writ Jurisdiction Case No. 15527 of 2016. The learned Writ Court was not impressed with the filing of the writ application by the petitioners at this stage when the impugned order has already been given effect to and the recoveries from the petitioners have already been effected.

2. The facts of the present case would reveal that the petitioners, who were earlier appointed as surveyor in the year 1975, got promoted to the post of Junior Engineers in 1985 but their promotions were cancelled by the authorities, the petitioners challenged the order cancelling their promotion in C.W.J.C. No. 977 of 1998 which was decided by this Court on 17.04.1998 whereby the orders of cancellation of promotion was set aside by learned Writ Court with liberty to the competent authority to proceed in the matter in accordance with law.

3. It further appears that pursuant to the order of this Court, the petitioners were reinstated and promotion of the petitioners were restored. They were granted regular promotion on completion of 10 years to the post of Assistant Engineers and were granted time bound promotions. After a lapse of about 15



years, the authorities of the respondents realized that the petitioners were granted time bound promotion dehors the provision underlying the scheme. As regards petitioner nos. 3 and 5 along with one another it was found that their promotion was not in terms of the scheme, therefore, their time bound promotion, earlier granted, was cancelled by the impugned order Annexure 1 of the writ application.

4. This order was circulated in the offices of the authorities across the State and thereupon steps were taken to initiate the recovery proceedings against petitioner nos. 1 to 5. Petitioner nos. 2 and 3 superannuated on 28.02.2013, petitioner no. 1 superannuated on 31.03.2014 and petitioner no. 4 superannuated on 31.10.2014 whereas petitioner no. 5 superannuated on 30.01.2016.

5. The learned Writ Court found that even though the recovery order was issued on 22.08.2013, vide Annexure-2 to the writ application, except petitioner no. 2 in whose case recovery was sought to be effected from his gratuity, none of the petitioners raised a voice of protest. It was found that respondent no. 5 has superannuated recently on 30.01.2016 and even till his retirement he had not raised any protest.

6. Having gone through the entire materials on the



record, the learned Writ Court found that in the facts of the present case, the judgment of the Hon'ble Apex Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer)** reported in **(2015)4 SCC 334** would not apply. The learned Writ Court therefore, was not happy with the delay on the part of the petitioner nos. 1 to 5 in taking recourse to the legal proceedings and ventilating their grievance immediately or within a reasonable time from the date on which the cause of action arose to them.

7. As regards petitioner nos. 6 and 7, the learned Writ Court found that in their case recoveries were affected recently in the year 2016 only and therefore, those recoveries were without giving any opportunity or notice to them, therefore, in their case directions have been issued to the respondent authorities to consider the matter afresh.

8. In the facts of the present case, we find that the appellants had not raised their grievance for a considerable period of about 3 years prior to filing of the present writ application. The submission of learned counsel representing the appellants is that they have moved this Court only after finding the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih (Supra)**.



9. In our opinion, the subsequent judgment of the Hon'ble Supreme Court cannot be taken as a cause of action for filing of the writ application, the facts and circumstances of the present case are quite different and distinct from the case of **Rafiq Masih** (*Supra*). The recoveries have already been given effect to, in these circumstances, we are not inclined to entertain the present appeal. The present Letters Patent Appeal is dismissed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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