

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1108 of 2018

In

Civil Writ Jurisdiction Case No.4810 of 2015

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1. Bihar State Cooperative Marketing Union Ltd. (BISCOMAUN) through its Managing Director, having its office at West of Gandhi Maidan, P.S.-Gandhi Maidan, District-Patna
 2. Regional Officer, Biscomaun, Ara, Bhojpur.

... .. Appellant/s

Versus

1. The State Of Bihar through Secretary-Cum-Commissioner, Department of Food and Consumer Protection, Government of Bihar, Old Secretariat Building, Patna.
2. The Bihar State Food and Civil Supplies Corporation Ltd. through its Managing Director, Sone Bhawan, Birchand Patel Marg, Patna.
3. Komal Tiwari, son of Late Dharma Deo Tiwari, Resident of village-Chandwa, Police station- Ara -Nawada, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr. A.B. Ojha, Sr. Advocate Mr. Nitesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-02-2019

Heard Shri Y.V. Giri, learned Senior Counsel for the appellants and Shri A.B. Ojha, learned Senior Counsel for the respondent No.3-petitioner and Shri Ashutosh Ranjan Pandey, learned Additional Advocate General-15 for the State of Bihar.

2. The appeal questions the correctness of the discretion exercised by the learned single Judge on 05th July,



2018 passed in C.W.J.C. No.4810 of 2015, whereby an interim direction has been given for making payments to the respondent No.3-petitioner on account of certain arrears of salary, which the respondent No.3 is stated to be entitled.

3. The appeal was entertained and the operation of the impugned judgment was stayed on 13th of August, 2018.

4. We took up the matter on 22nd February, 2019 and had passed the following order:

“Heard Shri Pranav Kumar, learned counsel for the appellant, and Shri A.B. Ojha, learned Senior Counsel for the respondent. Shri Pranav Kumar prays for an adjournment till Monday.

The matter will come up for hearing on Monday as the arguments have proceeded and Shri Ojha has taken us through the gamut of facts to contend that, as a matter of fact, the respondent-petitioner is claiming declaration of his rights as against the State of Bihar having been in its employment and also consequential pensionary and other post-retiral benefits. He submits that even though his status of employment vacillated between the State and the appellants, yet his status and his rights would be governed in accordance with his claim of being a Government employee and for which a writ petition would be maintainable as it also includes the determination of his status in service, the period whereof has been spent exclusively with the State Government.

Prima facie, we are of the view that the writ petition may be maintainable for the determination as claimed by the respondent-petitioner.

The present Letters Patent Appeal has



been filed against an interim order whereby certain directions have been issued for making certain payments to the respondent-petitioner.

Let the matter come up on Monday i.e. 25th of February, 2019.”

5. Shri Ojha, learned Senior Counsel for the respondent no.3-petitioner has urged that in view of the nature of the relief claimed in the writ petition, the writ petition is very much maintainable and therefore he is also entitled to all such payments treating him to be a Government servant. However, the said liability has not been disputed by the appellants before this Court and it has come up contending that payments can only be made in the chronological order. The said stand of the appellants has been rightly discarded by the learned single Judge and directions have been issued for payment to the respondent no.3-petitioner.

6. Shri Giri, learned Senior Counsel for the appellants contends that a relief which ought to have been granted finally has been extended at the interim stage and he further contends that the manner in which the payment has been directed by carving out an exception in the case of the respondent-petitioner, the same may not be permissible in view of the various orders passed from time to time by the several Benches of this Court, including Division Benches where it has



been observed that in the matter of liquidating the liability of such arrears, the same shall be disbursed in seriatim and in a chronological order. Shri Giri submits that in the event, the said directions are to be followed, then in that event the direction given by the learned single Judge would run counter to the same. He has invited the attention of this Court to various orders passed in this regard to a compilation placed before us, viz., L.P.A. No.778 of 2007 dated 21.04.2008, LPA No.779 of 2017 dated 15.05.2018, L.P.A. No.1374 of 2014 dated 12.05.2017, L.P.A. No.980 of 2016 dated 08.08.2016, CWJC No.7197 of 2007 dated 06.12.2013, CWJC No.14397 of 2007 dated 21.07.2014, CWJC No.5534 of 2014 dated 11.5.2016, CWJC No.17280 of 2015 dated 06.07.2017 and CWJC No.17126 of 2015 dated 6.7.2017.

7. Having considered the submissions raised, in our considered opinion, a relief that can be granted only finally should ordinarily not be granted at the interim stage. The relief sought by the respondent-petitioner is with regard to his arrears of salary and the writ petition appears to be grounded on the fact that the respondent no.3-petitioner should be treated to be a Government servant and his repatriation or otherwise from the appellants cannot in any way alter his status of employment.



8. In the wake of the aforesaid stand taken by the respondent no.3-petitioner, the first issue therefore which has to be decided is about the liability of the payments to be fixed either on the appellants or the State of Bihar. This has not been adjudicated upon, but it appears that the appellant itself did not dispute its liability, but rather took a stand that the payments can be made provided the same proceeds in a chronological manner and accordingly the respondent no.3-petitioner can be paid his dues whenever his turn arrives.

9. Shri Ojha, however, submits that this unending wait for the respondent-petitioner would ultimately render the entire exercise infructuous and therefore the matter requires an early disposal. Shri Giri to counter this submission contends that on account of the financial crisis of the appellants, various Benches of this Court have been pleased to accept the procedure for disbursement to be made in a chronological order.

10. In order to arrive at the correct conclusion, we are of the considered opinion that the learned single Judge may prefer to proceed with the merits of the claim of the respondent-petitioner and thereafter fix the liability of payments. In the event it is found that the claim of the respondent-petitioner is liable to be satisfied by the State Government, then in that



event, waiting in the queue in seriatim to receive payments from the appellants does not arise. The State Government if found liable can be compelled to make the payments to the respondent-petitioner, which appears to be a very petty amount.

11. In the event, however, the Court comes to the conclusion that the appellants are liable to make the payments, then in that event, the same will have to be considered in the light of the submissions which have been advanced by Shri Giri in this appeal.

12. We therefore for all the aforesaid reasons do not find any justification for an exception to be carved out and for a direction for making the payments without deciding the claim on merits.

13. Consequently, the appeal is allowed and the impugned direction for making the payments immediately as well as compelling the personal appearance of the officials is set aside.

14. The matter stands remitted back to the learned single Judge who shall now proceed to consider the matter on merits as observed herein above and the case shall be listed before the appropriate Bench having the current roster on 25th of March, 2019 for disposal.



15. Learned counsel for the respondent-petitioner may make a request before the appropriate Bench for any priority hearing.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.N.M./Saif

AFR/NAFR	
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