

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.969 of 2015

In

Civil Writ Jurisdiction Case No.130 of 2014

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Raj Kumar Jha Son of Late Krishnadeo Jha, Resident of Village- Phulkahi,
P.S.- Ryam, District- Darbhanga.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Balmiki Nagar, West Champaran, Bettiah.
4. Sri Ram Pukar Ranjan, Son of Not Known, Address not known to the petitioner, The Chief Engineer, Water Resources Department, Balmiki Nagar, West Champaran, Bettiah.
5. The Superintending Engineer, Head Works Circle, Water Resources Department, Balmiki Nagar, West Cha
6. The Executive Engineer, Head Works Division, Water Resources Department, Balmiki Nagar, West Champa

... .. Respondents

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with

Letters Patent Appeal No. 30 of 2018

In

Civil Writ Jurisdiction Case No.17988 of 2015

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Usha Devi, wife of Late Uma Shankar Prasad, resident of Village- Kalu Pakar, P.S. Phenhara, District- East Champaran at Motihari.

... .. Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Chief Engineer, Public Health Engineering Department, Government of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Muzaffarpur.
6. The Superintending Engineer, Public Health Engineering Circle, Motihari.
7. The Executive Engineer, Public Health Engineering Division, Bettiah, District- West Champaran.

... .. Respondents



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with
Letters Patent Appeal No. 435 of 2017
In
Civil Writ Jurisdiction Case No.2932 of 2013

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1. The State of Bihar
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-Cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Works Circle, Muzaffarpur.
5. The Executive Engineer, Rural Works Department, Works Division, Muzaffarpur East.
6. The District Provident Fund Officer, Muzaffarpur, District- Muzaffarpur.

... .. Appellants

Versus

1. Basirun Khatoon @ Basirun Nisha, wife of Lal Mohammad, resident of Village Bangara, Wajid, P.O.- Chainpur Bangara, P.S.- Maiyari, District- Muzaffarpur.
2. The Accountant General, Bihar, Patna.

... .. Respondent/s

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with
Letters Patent Appeal No. 1406 of 2016
In
Civil Writ Jurisdiction Case No.6174 of 2015

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Fatima Khatun @ Fatima Khatoon, wife of late Magharuddin resident of village+P.O. - Rajokhar, P.S. Araria, R.S. Dist - Araria.

... .. Appellant

Versus

1. The State of Bihar through the Secretary, Department of Public Health Engineering Department, Bihar, Patna.
2. The Secretary, Department of Public Health Engineering Department, Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
5. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Bihar, Patna.
6. The Chief Engineer, Department of Public Health Engineering Department



(Mechanical), Bihar, Patna.

7. The Superintending Engineer, Department of Public Health Engineering, Purnea Circle, Purnea.
8. The Executive Engineer, Public Health Division, Purnea.
9. The Executive Engineer Public Health Division, Saharsa.
10. The Executive Engineer, Public Health Division, Kishanganj.
11. The Accountants General (A & E), Bihar, Patna.
12. The District Accounts Officer, District - Kishanganj.
13. The Treasury Officer, Kishanganj.
14. The District Magistrate, Kishanganj.

... .. Respondents

with
Letters Patent Appeal No. 177 of 2017
In
Civil Writ Jurisdiction Case No.23218 of 2013

Narendra Prasad Singh, son of Late Baneshwar Singh, Resident of Village-Pacharah, P.O.-Pacharah, P.S.-Husua, District-Nawada (Now Retired)

... .. Appellant

Versus

1. The State of Bihar, through the Principal Secretary, Department of Water Resources Government of Bihar, Sinchai Bhawan, Patna.
2. The Principal Secretary, Department of Personnel and Administrative Reforms (Now General Administration), Government of Bihar, Patna.
3. The Joint Secretary, Department of Water Resources Government of Bihar, Sinchai Bhawan, Patna
4. The Under Secretary, Department of Water Resources Government of Bihar , Sinchai Bhawan,Patna
5. The Engineer-in-Chief Water Resource Department, Government of Bihar, Patna
6. The Chief Engineer Department of Water Resources, Katari Jheel Road, Gaya, Bihar.
7. The Superintendent Engineer, Water Ways Circle, Gaya
8. The Executive Engineer, Tilaiya Canal Division, Wazirganj, Gaya

... .. Respondents

with
Letters Patent Appeal No. 1736 of 2017
In
Civil Writ Jurisdiction Case No.12986 of 2015



Smt. Mamta Devi, W/o Late Lalan Singh, R/o Village + P.O.- Gaway, P.S. Sheikhpura, District- Sheikhpura.

... .. Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Building Construction Department, Visheshwaraiya Bhawan, Patna.
3. The Engineer-in- Chief, Building Construction Department, Visheshwaraiya Bhawan, Patna.
4. The Chief Engineer, Energy Department, Building Construction Department, Visheshwaraiya Bhawan, Patna
5. The Superintending Engineer (Electrical), Electrical Works Circle, South Bailey Road, Patna.
6. The Executive Engineer, Electrical Works Circle, South Bailey Road, Patna.
7. The Assistant Engineer, Sub Division Office, Patna II, South Bailey Road, Patna.
8. The Junior Engineer, Electrical Works Sub- Division, Biharsharif.

... .. Respondents

Appearance :

(In Letters Patent Appeal No. 969 of 2015)

For the Appellant/s : Mr.Bishnu Kant Dubey, Adv.
Mr. Ranjit Kumar, Adv.

For the Respondent/s : Mr.Sc18- N. Hoda Khan

(In Letters Patent Appeal No. 30 of 2018)

For the Appellant/s : Mr.Vijay Kumar Singh

For the Respondent/s : Mr.S.Raza Ahmad -Aag5

(In Letters Patent Appeal No. 435 of 2017)

For the Appellant/s : Mr. Dharendra Kumar, AC to AAG 6

For the Respondent/s : Mr. Vijay Kumar Singh, Adv.

(In Letters Patent Appeal No. 1406 of 2016)

For the Appellant/s : Mr. Siyaram Pandey, Adv.

For the Respondent/s : Mr. A.K. Rastogi, AAG 10

For the Accountant Gen. : Mr. Bindhyachal Rai, Adv.

(In Letters Patent Appeal No. 177 of 2017)

For the Appellant/s : Mr. Mukul Sinha, Adv.

Mr. Suraj Kumar, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG 4

(In Letters Patent Appeal No. 1736 of 2017)

For the Appellant/s : Mr. Bishnu Kant Dubey, Adv.

For the Respondent/s : Mr. Ashok Kumar Dubey, AC to AAG 11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)



Date : 06-03-2019

Heard the parties.

Each of these intra-Court appeals filed under Clause-X of the Letters Patent of the High Court of Judicature at Patna arise from the judgment and order of a learned Single Judge, whereby in consideration of the claim made by the work charge employee and/or his dependent either the claim has been upheld or has been rejected.

To be specific, while L.P.A. No. 435/2017 is an Appeal filed by the Respondent State feeling aggrieved by the acceptance of the claim by a learned Single Judge of this Court for pensionary benefit to a work charge employee/dependent, in so far as other appeals are concerned, since the claim towards the pensionary benefit has been rejected that they are before this Court.

The matter was heard and kept pending because the issue, whether or not, a work charge employee and/or his dependent is entitled to pensionary benefit was pending consideration before a Full Bench of this Court in LPA No. 166/2018 (**Mobina Khatoon versus the State of Bihar & Ors.**) and LPA No. 289/2018 (**State of Bihar & Ors. Versus Soniya Devi & Anr.**).

The judgment of the Full Bench has since been delivered and is reported in 2019 (2) BLJ 9 and since these matters were



directed to be posted on disposal of the Full Bench matter, that these matters were listed yesterday and when Mr. Siyaram Pandey, learned Counsel appearing for the appellant in LPA No. 1406/2016 produced a copy of the Finance Department, Government of Bihar to submit that steps have been taken towards the compliance of opinion of the Full Bench.

Since Mr. Dharendra Kumar, learned AC to AAG 6 expressed reservation on the action taken as well to examine the judgment of the Full Bench that the matter is posted today and when Mr. Dharendra Kumar, learned AC to AAG 6 admits to the steps taken by the Government of Bihar in the light of the opinion expressed by the Full Bench on the issue raised and contested. For the sake of convenience we are persuaded to reproduce the relief prayed by the appellants in their respective writ petitions and which reads under:

“Re: L.P.A.No. 969/2015 arising from C.W.J.C.No. 130/2014 and the appellant-petitioner has prayed for the following relief:

- (i) To quash the order bearing memo no. 187 dated 17.1.2013 (Annexure 1) passed by Respondent no.5 whereby and whereunder in compliance to the direction of the Hon’ble Court dated 03.10.2012 passed in C.W.J.C. No. 16099/2012, the claim of the petitioner has been rejected in a mechanical and



arbitrary manner, ignoring the law laid down in the case of Koshi Project Workers Association Versus the State of Bihar reported in 2007(1) P.L.J.R 358 as well as clear direction issued by the department, because petitioner who belongs to a poor family and low payee employee was not in a position to pleased Respondent no. 5 in a manner he likes, result being that in spite of clear direction issued by the Hon'ble Court to consider the case of the petitioner in the light of observation made in the judgment of a Division Bench of this Hon'ble Court (supra), legal claim of the petitioner for regularisation has been turned.

(ii) To direct the respondent to regularise the service of the petitioner and grant all consequential benefit to him, as he joined as work supervisor on 20.12.1973 in the work charge establishment and till his retirement he worked as work charge employee whereas similarly situated employees appointed along with the petitioner as work charge employee and even much junior to the petitioner, their services have already been regularized and they have been brought in the regular establishment in terms of different circular and resolution of the finance department, Government of Bihar bearing memo no. PC2-29-02/84-3058 Finance dated 22.10.84, Resolution no. 3/P.A.R-01/87 (part) 9394 (2) dated 23.10.87 and resolution no. 3/P.A.R.-03/51/88-5074 dated 20.9.90 (Annesure-2 series), however till date case of petitioner for regularization has not been considered in the light of said circular and resolutions as well as judgment of this Hon'ble



Court as stated above as such action of the respondents in the instant matter is highly illegal, arbitrary, discriminatory and colourable exercise of power.

Re: L.P.A.No. 30/2018 arising from C.W.J.C.No. 17988/2015. The appellant-petitioner has prayed for the following relief:

(I) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to treat the services of the husband of the petitioner as a regular employee under the State Government on the ground that the husband of the petitioner was engaged as a daily wager by the competent authority in the year 1980-81 and subsequently the services of the husband of the petitioner was taken into work charge establishment in the year 1988.

(ii) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to grant pensionary benefit and other death-cum-retiral dues to the petitioner on the ground that the husband of the petitioner died on 21.01.2009 during the course of discharge of his duty under the Respondent Department.

Re: L.P.A.No. 435/2017 arising from C.W.J.C. No. 2932/2013. The appellant-petitioner has prayed for the following relief:



For issuance of appropriate writ/writs commanding the official respondents to make payment of death-cum-retiral benefits to the writ petitioner including family pension, gratuity, group insurance, provident fund and earned leave.

Re: L.P.A.No. 1406/2016 arising from C.W.J.C. No. 6174/2015. The appellant-petitioner has prayed for the following relief:

1. That this is an application for issuance of a writ in the nature of mandamus or an appropriate writ/writs, order/orders direction/directions commanding the respondents to regularise the service of the husband of the petitioner retrospectively w.e.f. from 14.09.1991, the date on which the husband of petitioner successfully completed 10 years continuous and unblemished service under regular work charge establishment in the Department of Public Health and Engineering Department, Govt. of Bihar, who died in harness on 01.02.1994 and be pleased to allow the family pension and other death-cum-retirement benefits to the petitioner consequent upon granting him the benefit of regularization after completion of 10 years service under work charge establishment in the Department as has been done in the case of other similarly situated persons as she is legally entitled to get family pension and all other death-cum-retiral dues of her husband after his death and be further pleased to pass such other order/orders which your Lordships



may be deemed fit and proper in the facts and circumstances of the case.

Re: L.P.A.No. 177/2017 arising from C.W.J.C. No. 23218/2013. The appellant-petitioner has prayed for the following relief:

(I) For an appropriate direction to the Respondents to fill up the sanctioned vacant posts in accordance with the undertaking given by Principal Secretary, Water Resources Department on 20.07.2011 before Hon'ble Mr. Justice Uday Sinha Commission within six months which will have natural effect of regularization of petitioners services as unskilled labour in the Water Resources Department with effect from 1982, against which petitioner, alongwith others had been working since 1982 till his normal date of superannuation from service, on 31.01.2013, on attaining the age of 60 years.

(ii) An appropriate direction for payment of post retiral benefits to the petitioner, in as much as the order dt. 30.01.2013 relieving the petitioner from engagement also states that he is being relieved in pursuance of attaining his age of superannuation of 60 years, which is akin in treating him as a regular employee.

Re: L.P.A. No. 1736/2017 arising from C.W.J.C. No. 12986/2015. The appellant-petitioner has prayed for the following relief:

1. That this is an application for issuance of a writ in the nature of mandamus directing and commanding the



respondents to make payment of death-cum-post retiral benefits to the petitioner like as family pension, gratuity, leave encashment in lieu of unutilized salary and other post retiral benefits and/or for issuance of a writ/order/direction for which the petitioner may be found legally entitled to under the facts and circumstances of the case.”

As we have expressed above except for L.P.A.No. 435/2017 the rest of the appeals are before us because the respective claims have been rejected by the learned Single Judge.

The Full Bench on examination of the judgments passed on the issue by this Court from time to time, has finally concluded at Paragraph-70 in the following terms:

“70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in this regard is framed by the Government-

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid pension and his family, in case of death of such workcharged employee, would be paid the family pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death cum retiral benefits.



(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment.”

Since the State respondents had rejected the claim of the writ petitioners in view of the legal position that was prevailing at the relevant time and which decision of the State also has been affirmed by the learned Single Judge in the opinion expressed except for the writ petitioner who are respondents in L.P.A.No. 435/2017, we are of the view that the issue raised by the work charge employees and/or their dependents requires to be addressed upon by the concerned respondents afresh in the light of the opinion of the Full Bench expressed in the case of **Mobina Khatoon** (supra) and for passing appropriate orders towards admissibility/ inadmissibility of the pensionary benefits to these appellants- petitioners.

We would thus direct the concerned authorities in the respondent Department in each of the appeals/ writ petitions, to examine the claim of the appellants- petitioners except the writ petitioner in L.P.A.No. 435/2017 and pass appropriate orders bearing in mind the Full Bench expression found at Paragraph-70 of the judgment and which decision be taken within a period of six weeks from the receipt/ production of a copy of this order.



In so far as L.P.A.No. 435/2017 is concerned, it has to yield to the opinion of the Full Bench and is accordingly dismissed.

In result, the judgment and order passed by the learned Single Judge in C.W.J.C.No. 130/2014, C.W.J.C.No. 17988/2015, C.W.J.C.No. 6174/2015, C.W.J.C.No. 23218/2013 and C.W.J.C.No. 12986/2015, which are subject matter of L.P.A.No. 969/2015, L.P.A.No. 30/2018, L.P.A.No. 1406/2016, L.P.A.No. 177/2017 and L.P.A.No. 1736/2017, are set aside. Consequently, the writ petitions are disposed of in terms of the directions stipulated above. While L.P.A.No. 435/2017 is dismissed, the rest of the appeals are allowed in terms of the judgment of the Full Bench rendered in the case of **Mobina Khatoon** (supra) and with the direction present therein.

No order as to costs.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2019
Transmission Date	NA

