

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1561 of 2015

In
Civil Writ Jurisdiction Case No.9138 of 2012

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1. The Bihar State Cooperative Land Development Bank presently known as Multi State Cooperative Land Development Bank Ltd., Bihar, Jharkhand Budh Marg, Patna through its Managing Director.
 2. The Managing Director, Bihar State Cooperative Land Development Bank, presently Known as Multi State Cooperative Land Development Bank Ltd., Bihar, Jharkhand Budh Marg, Patna.
 3. The Regional Manager, Land Development Bank, Muzaffarpur
 4. The Branch Manager, Land Development Bank, Raxaul, East Champaran

... .. Appellant/s

Versus

1. Laxman Prasad, S/o Late Dwarika Prasad Singh, R/o village - Krishnapur, P.O. and P.S. Hilsa, District - Nalanda
2. The Commissioner, Employees Provident Fund, Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Y.V. Giri, Senior Advocate
		Mr. Rajesh Prasad Chaudhary, Advocate
For the Respondent No.2:		Mr. Madhav Krishna, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-02-2019

Heard Mr. Y.V. Giri, learned senior counsel appearing for the appellants along with Mr. Rajesh Prasad Chaudhary, advocate on record and Mr. Madhav Krishna, learned counsel for the Commissioner, Employees Provident Fund. Though served, the respondent-writ petitioner has not chosen to appear.

This intra Court appeal arises from the judgment



and order dated 12.08.2013 passed by a learned Single Judge in C.W.J.C. No.9138 of 2012, whereby the writ petition has been allowed with a direction to the appellant-Bank to make payment of salary with effect from 23.11.2009 until 30.06.2011, i.e., the date on which the respondent-writ petitioner would attain the age of sixty years.

Mr. Giri, learned senior counsel has questioned the judgment and order of the learned Single Judge on the following grounds :

(a) the appellant-Bank is a Multi State Co-operative Society presently regulated by the Multi State Co-operative Societies Act, 2002 and, thus, in view of the legal position settled on the issue of maintainability of a writ petition and whether the appellant-Society is amenable to the writ jurisdiction of this Court, the writ petition itself was not maintainable and

(b) even on merits, the respondent- writ petitioner was not entitled to the relief because he had superannuated on 30.06.2009 and he chose to file the writ petition three years later in the year 2012, i.e., after crossing the age of superannuation.

Learned counsel has while explaining the sequence of events has submitted that raising somewhat similar



issues, a number of employees had approached this Court in C.W.J.C. No. 7364 of 2009, which was allowed on 29.07.2009 while holding that the age of superannuation would be sixty years. According to learned senior counsel, this judgment and order of the learned Single Judge was challenged by the State in L.P.A. No. 1621 of 2009 and by order dated 24.12.2009, the judgment of the learned Single Judge was stayed. He submits that though the L.P.A. was dismissed on 13.09.2010 but on a Special Leave preferred by the State that the Supreme Court, by an interim order, stayed the order passed by the Division Bench on 08.07.2011. Mr. Giri, learned senior counsel submits that the SLP was dismissed subsequently but then it was the end of the road for the writ petitioner herein because in between this period this writ petitioner had attained the age of superannuation. He, thus, submits that either on maintainability or on merits, the petitioner is not entitled to relief.

Having heard Mr. Giri, learned senior counsel for the appellants and having perused the records, we are persuaded to accept the submission of Mr. Giri because in our opinion neither the writ petition was maintainable before this Court in the nature of relief so prayed by the writ petitioner and even on the issue of delay, the writ petition was nor worth consideration



because the writ petitioner having superannuated on 30.06.2009 chose to approach this Court much after reaching the age of sixty years and thus even on the principle of no work no pay, we are in respectful disagreement with the opinion expressed by the learned Single Judge to grant him benefit of salary for the period in question.

In result, the judgment and order of the learned Single Judge passed in C.W.J.C. No.7364 of 2009 is modified to the extent it grants not only enhancement of superannuation age to the petitioner but also grants him benefit of salary for the said period which part of the relief granted by the learned Single Judge is accordingly set aside. The order of the learned Single Judge is modified to the extent above.

Accordingly, this appeal is allowed to the extent above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/Nasimul

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