IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1738 of 2017
In
Civil Writ Jurisdiction Case No.10890 of 2016

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1. Shree Bhagwan Singh, son of Late Pradip Singh resident of Village-Daudpur, P.O.-Kalpa, P.S.-Jehanabad. District-Jehanabad
2. Paramhansh Singh son of Late Janki Singh Resident of Village- Basouri, P.O.-Bagwa, P.S.-Udwantnagar, District-Bhojpur, Ara
3. Shree Niwas Singh son of Late Indradeo Singh resident of Village-Dharupur, P.O.-Dharupur, P.S. Bikramganj, District-Rohtas

... ... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Minor Irrigation, Bihar, Patna
3. The Principal Secretary, Department of Finance, Bihar, Patna
4. The Deputy Secretary, Department of Minor Irrigation, Bihar, Patna

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr. Jitendra Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 29-11-2019

Heard learned counsel appearing for appellants as well as AC to AAG 14.

Counter affidavit has been filed on behalf of the State.

This appeal has been preferred against

judgment dated 16.11.2017 passed by learned Single Judge in C.W.J.C. No. 10890/2016 by which and whereunder, learned Single Judge dismissed the above stated C.W.J.C. No. 10890/2016 rejecting for issuance of direction to count the entire period of service of the appellants taking note of Clause 2(v) of the Memorandum dated 22.8.2014.

The appellants were appointed in work charged establishment in the year 1985 and continuously worked in different departments. However, the services of appellants were regularised on 22.8.2014 and by issuance of Memorandum dated 22.8.2014, a rider of this effect was put up that the services rendered by the appellants in work charged establishment would be counted as one year for every five years for all practical purposes at the time of calculation of pension and gratuity amount. However, the appellants superannuated from service in the year 2016 and their pension and gratuity amount were fixed taking note of the above stated rider as mentioned in Memorandum dated 22.8.2014.

The appellants being aggrieved by the aforesaid rider filed C.W.J.C. No. 10890 of 2016, which was dismissed by learned Single Judge passing impugned judgment dated 16.11.2017 against which, this Letters Patent Appeal has been preferred by the appellants.

Learned counsel appearing for appellants having relied upon decision of **Netram Sahu Versus State of Chhattisgarh** reported in **2018(2) PLJR 284 SC** submitted that the Hon'ble Apex Court has already decided that after regularisation the entire period of service shall be counted for purpose of fixation of pension and gratuity amount. He also referred the judgment of **Prem Singh Versus State of Uttar Pradesh & Ors.** passed on 2 September, 2019 in **Civil Appeal No. 6798 of 2019 and other analogous appeals** and drew our attention towards paragraph 35 of the aforesaid judgment and submitted that the Hon'ble Apex Court reiterated the same principle as laid down in the case of Netram Sahu (supra).

On the other hand, learned AC to AAG 14 refuted the above stated submission arguing that the services of the appellants were regularised with the rider as mentioned in Clause 2(v) of the Memorandum dated 22.8.2014 and, therefore, the services rendered by the appellants prior to regularisation of their services cannot be counted for purpose of calculation of pension and gratuity amount.

Having heard the above stated contentions of the parties, we went through the record along with impugned judgment.

It is admitted position that the appellants were appointed in work charged establishment sometime in the year 1985 and they continuously worked in work charged establishment at different places. Furthermore, it is also admitted position that the services of appellants were regularised *vide* Memorandum dated 22.8.2014 with a rider that the services rendered by them in work charged establishment shall be counted only one year for every five years. Furthermore, it is admitted position that the pension and gratuity amount of the appellants were fixed in accordance with the above stated rider mentioned in Memorandum dated 22.8.2014.

However, the only question is that as to whether the rider fixed by the State Government in Memorandum dated 22.8.2014 is proper or not.

In view of the above stated decisions as cited on behalf of the appellants, we find that the rider as fixed by the State Government in Memorandum dated 22.8.2014 is not in consonance of Article 14 of the Constitution of India and, therefore, we are of the view that the State Government had no right to fix the above stated rider.

It is obvious from the decisions cited on behalf of the appellants that the Hon'ble Apex court has already set at rest the above stated dispute holding that the services rendered in work charged establishment shall be counted for purpose of pension and gratuity after regularisation of the service, therefore, in the aforesaid circumstance, we have no option except to declare the rider mentioned in Memorandum dated 22.8.2014 void and on the basis of aforesaid discussions, the impugned judgment dated 16.11.2016 is, hereby, set aside and it is ordered that the respondent Nos. 2, 3 and 4 shall calculate the pension and gratuity amount of the appellants after taking into the consideration of the services rendered by the appellants in work charged establishment prior to regularisation of their services and shall ensure the payments within three months from the date of receipt / production of a copy of this judgment.

However, it is made clear that the appellants shall not be entitled to claim back wages.

In the aforesaid manner, this Letters Patent Appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
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