

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.260 of 2019

In
Civil Writ Jurisdiction Case No.18435 of 2014

=====

Md. Moin son of Late Abdul Gaffur A Resident of Village - Sabutter, P.S. -
Kritya Nand Nagar, District- Purnea.

... .. Appellant/s

Versus

1. The State of Bihar and Ors Bihar
2. Principal Secretary, Department of Rural works, Government Of Bihar,
Patna Bihar
3. Under Secretary Department of Rural works, Government of Bihar, Patna
Bihar
4. Superintending Engineer Rural Works Department Work Anchal.
Kishanganj-1
5. Executive engineer Rural works Department, Work Division Kishanganj-1
Bihar
6. District Magistrate, Kishanganj District- Kishanganj Bihar
7. Establishment Deputy Collector, Kishanganj Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Rajni Kant Jha
For the Respondent/s : Mr.Pushkar Narain Shahi (Aag6)

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-12-2022

Heard the learned counsels for the parties.

2. The appellant has assailed the order of the
learned Single Judge dated 07.01.2019 passed in C.W.J.C No.
18435 of 2014. The appellant's father was working as an
employee in the Work Charge Establishment, he died while he
was in service. In the result, appellant was appointed on



30.10.1993 to the post of Roller Khalasi in the pay scale of Rs. 775-12-955-14-1025. While he was working as such respondents were stated to have noticed that appellant is not entitled to compassionate appointment with reference to service particulars of his deceased father, that deceased employee was not regular holder of the post in the department. Such error has been noticed in the year 2014. Orally services of the appellant was terminated with effect from 11.09.2014. Feeling aggrieved by oral termination, appellant filed C.W.J.C No. 18435 of 2014 and it was dismissed on 07.01.2019 hence, the present L.P.A.

3. Learned counsel for the appellant submitted that he has rendered unblemished services from 30.10.1993 till 11.09.2014. The learned Single Judge has not appreciated dates and events and also appellant was regularly appointed to hold the post of Roller Khalasi in the Work Charge Establishment in the pay scale of Rs. 775-12-955-14-1025. In other words, he is a permanent employee, before terminating his services, he is entitled to notice and other formalities like holding of an inquiry under Bihar Government Service CCA Rules, 2005.

4. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that appellant initially appointed on compassionate ground in the post of



Roller Khalasi in the pay scale of Rs. 775-12-955-14-1025 is contrary to factual aspect to the extent that his late father was not a permanent employee so as to extend compassionate appointment to the appellant. The same has been noticed in the year 2014, therefore, the Superintendent of Engineer proceeded to ask the appellant to not to attend the work. In other words, oral termination has been ordered and it is in accordance with law.

5. Heard learned counsel for the respective parties.

6. Appellant's father was working on ad-hoc basis in the Work Charge Establishment and he died. In the result, the then officials were under the impression that deceased employee was regular hold of the post in the department. Thus, proceeded to process the appellant's application for compassionate appointment and it was issued on 30.10.1993 while appointing him to the post of Roller Khalasi in the Work Charge Establishment in the pay scale of Rs. 775-12-955-14-1025. It is to be noted that 30.10.1993 order of compassionate appointment to a particular post read with pay scale has not been withdrawn/canceled/modified till today.

7. On the other hand, oral termination has been ordered on 11.09.2014. When the appellant has rendered service



from 30.10.1993 in the capacity of permanent employee. In such an event the respondents should have initiated departmental inquiry under Bihar CCA Rules, 2005. No such action has been taken even to this day. By virtue of our previous order the appellant is stated to have been taken back to duty on 13.12.2022.

8. In the light of these facts and circumstances the appellant is entitled to continue to hold the post pursuant to the order of appointment dated 30.10.1993. The concerned respondent is hereby directed to extend all service and monetary benefits during the period from 11.09.2014 till 13.12.2022 and further continued to extend all service and monetary benefits from time to time. The inaction of the respondent in the year 1993 cannot be rectified at this distance of time that too after decades. The factual material information has not been apprised by the learned Single Judge, therefore, order of the learned Single Judge dated 07.01.2019 passed in C.W.J.C No. 18435 of 2014 stands set aside. The appellant is entitled to all monetary benefits during the intervening period from the date of termination till reinstatement along with interest @ 8% *per annum*.

9. At this stage, learned counsel for the respondent



pointed out from Para 13 of the supplementary counter affidavit dated 14.12.2022.

10. Para 13 of the supplementary counter affidavit reads as under:-

“That however even if the appellant would have not stopped coming to duty in that case to the petitioner would have been removed from service in compliance of resolution no. 10710 dated 17.10.2013 of the Finance Department, Govt, of Bihar and the Office Order no. 19 dated 31.01.2014 issued by the present respondent department.”

11. The aforesaid action dated 17.10.2013 vide resolution no. 10710 and the Office Order No. 19 dated 31.01.2014 are without resorting to Bihar CCA Rules, 2005 as appellant had the permanent status that he was holder of the post of Roller Khalasi in the pay scale of Rs. 775-12-955-14-1025.

12. Therefore, the aforesaid decisions are hereby rejected.

(P. B. Bajanthri, J)

shoaib/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.12.2022.
Transmission Date	

(Purnendu Singh, J)

