

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.104 of 2022

In
Civil Writ Jurisdiction Case No.1740 of 2020

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1. Manoj Kumar Singh S/o Sri Nawal Kishore Singh Resident of Mohalla-Malidiyar Tola, Ward NO. 13, P.O. and P.S.-Mokama, District-Patna.
 2. Satyendra Kumar Singh S/o Sri Kailash Singh Resident of Village-Asharhi, P.O.-Kadirganj, P.S.-Nawadah, District-Nawada.
 3. Rajiv Ranjan Prasad S/o Sri Kailash Prasad Yadav Resident and P.O.-Hasanpur, P.S.-Madhepura. District-Madhepura.
 4. Pankaj Kumar S/o Dharendra Prasad Yadav Resident of Village-Pararia, P.O.-and P.S. Madhepura. District-Madhepura.
 5. Rajesh Lal Ranjan S/o Sri Jaikant Lal Deo Resident of Vilalge-Bachhi, Via-Anandpur, District-Darbhanga.
 6. Birendra Rai S/o Sri Chandrika Rai, Resident of Village-Jahangirpur, P.O.-Suhai, Sahpur, District-Chapra, Saran.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. The Principal Secreary, Department of Revenue and Lal Reforms (Consolidation Directorate), Govt. of Bihar, Patna.
3. The Director, Consilidation, Bihar, Budh Marg, Patna.
4. The Joint Director, Consolidation, Headquarter, Budh Marg, Patna.
5. The Dy. Director, Consolidation, Headquarter, Budh Marg, Patna.
6. The Dy. Director, Consilidation, Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shiv Kumar, Advocate
For the Respondent/s : Mr.Md. Khurshid Alam (Aag12)

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

Date : 17-11-2022

Mr. Md. Khurshid Alam (Aag 12) address the argument
for more than half an hour. Previous order dated 10.11.2022 reads
as under:-



“Heard the matter for sometime.

Question for consideration in the present appeal is whether Director or Deputy Director is appointing authority to group ‘C’ and ‘D’ employees in Revenue Department or not? The appellants who are all low paid employees they are before this Court from the year 1991 for one or the other reasons. Their initial appointment is on daily wage basis in the year 1987-88. Their services were removed on 14.06.1990 and they had approached this Court in filing C.W.J.C. No. 3814 of 1990 and order of removal was set aside while directing the concerned authorities to consider their name for the purpose of regularization. Pursuant to the aforesaid direction of this Court, the appellants services were regularized during the intervening period from 1993 to 1995 on various dates. When things stood thus on 23.02.1998 abruptly a decision was taken in directing the appellants to not to attend the duties of the post held by each of them. It was a subject matter in C.W.J.C. No. 2514 of 1998 and was disposed of on 01.09.1999 while directing the concerned official to initiate enquiry and take a decision. The enquiry report was submitted on 28.02.2000 in which the inquiring authority held that initial appointment of the appellants were by the competent authority – Deputy Director (Consolidation). Further, it was a subject matter of C.W.J.C. No. 4546 of 2004 and it was decided on 13.05.2005 directing the concerned authority to pass a reasoned order within a period of four weeks. Further adverse order was passed on 02.08.2007 reiterating the stand that Deputy Director, Consolidation is not competent authority to appoint group ‘C’ and ‘D’ employees like appellants.

At this juncture, it is to be noticed that on 15.04.1971, the Deputy Director has been authorized to appoint group ‘C’ and ‘D’ employees. It is to be noted that all along contention of the respondent – Director, Consolidation that he is the competent authority and not the Deputy Director. For such a trivial issue, the matter is being dragged from time to time. Moreover, as and when the appellants were directed to not to attend the office from 23.02.1998 they are not being heard in the matter. It is to be noted



that during the intervening period from the year 1993 to 1995, the appellants had status of regular employee in the light of the fact that their services were regularized. Therefore, if any adverse order is required to be issued against the appellants, they are entitled to have a notice read with C.C.A. Rules and its procedure. The same has not been adopted by the Director, Consolidation or Deputy Director whoever is competent authority to initiate proceedings against the appellants. Further it is noticed that the respondents are agitating their rights against the appellants only on the score that Deputy Director, Consolidation is not the competent authority to appoint Group 'C' and 'D' employees / regularization of daily wagers. In regularizing appellants services during the intervening period from the year 1993 to 1995, the Director or the State Government have not taken any action against the then Deputy Director who is alleged to have committed illegality in appointing appellants and further regularizing their services.

In the light of these facts and circumstances, Mr. Sarb Narayan Yadav, Director, Consolidation who is present in Court is hereby directed to produce general or Special Order of the government authorizing respective officer to be appointing authorities in so far as group 'C' and 'D' employees are concerned. The State government must have issued a general or special order in authorizing particular officer to appoint group 'C' and 'D' employees in terms of Rule 8 of the CCA Rules, 2005 or Old Rules. The Director is also hereby directed to apprise this Court as to whether earlier order dated 15.04.1971 authorizing Deputy Director, Consolidation to appoint group 'C' and 'D' has been withdrawn, reviewed/cancelled in authorizing Director, Consolidation. If it is so, what is the date of the order of the government authorizing only Director, Consolidation so as to apprise the contention of the respondents.

Relist this matter on 17.11.2022. Mr. Sarb Narayan Yadav, the Director, Consolidation must be present on the next date of hearing."



2. Today he has filed counter affidavit consisting of 8 documents Annexure A to H. In terms of the previous order, question for consideration is relating to competency of the authority who is empowered to appoint Group D employees of the consolidation department. Throughout, submission on behalf of the state is that Commissioner/Director consolidation is the competent authority. He has pointed out Annexure D and E to the counter affidavit filed today which is internal communication. From this we are not able to make out whether Director Consolidation has been authorized to appoint Group C and D employees in the consolidation department.

3. Further, we have pointed out from Rule 21 of Bihar Service Code reads with Appendix 3 in appreciating him that there is no post of Director Consolidation, so as to identify Head of the Department. In this backdrop, he has taken us once again to the facts of the case.

4. This matter is being heard from time to time due to non-assistance from the State counsel, Director Consolidation was summoned and he was also present on 10.11.2022. Today, also he is present. Today, we have posed question to the Mr. Sarb Narayan Yadav, Director Consolidation as to what are the powers and functions. It is submitted that he has assumed the post of Director



Consolidation on 01.09.2022, therefore, he is not aware of the powers and functions of the Director-Consolidation.

5. In the light of these facts and circumstances we have expressed our view that sufficient time has been granted to address the argument on behalf of the State. The same was not noticed by the State counsel and keep on arguing the matter.

6. At this juncture, we have expressed our view allowing him to address his argument whatever, he wants to make his submission, subject to imposition of exemplary cost for wasting the court's time. The same has been countered by him stating that he don't want to address the matter further, in the present case.

7. In view of these facts and circumstances we proceed to pass the following order in the LPA No. 104 of 2022.

Re:I.A. No. 2 of 2022

8. Heard I.A No. 2 of 2022 for condonation of delay of 709 days. For the reasons stated in the application and affidavit read with Apex Court's decision in the *suo motu* writ petition-recognizance for extension of limitation with miscellaneous applications. The appellant has made out a *prima facie* case to condone the delay of 709 days.

Accordingly delay stands condoned.

9. Having heard the case on merit on 10.11.2022.



10. Today, matter is listed only to apprise this court as to whether Director Consolidation or Deputy Director Consolidation is the competent authority to appoint Group C and D in the consolidation Department or not?

11. Learned counsel for the State has filed counter affidavit consisting of 8 documents i.e. Annexure A to H.

12. Perusal of Annexure A to H they are all internal communications. The State respondents have failed to produce relevant material to show that Director Consolidation is empowered to appoint Group C and D employees from the year 1987-1988 the year in which the appellants were appointed on daily wage basis.

13. Further, even on the date of regularization of their services in the year 1993 to 1995 no material has been placed on record to establish that Director Consolidation is the competent authority to appoint *ad hoc* employees to the post of Group C and D.

14. *Per contra*, material is available to establish that Deputy Director Consolidation was appointing authority to Group C and D. The same has been taken note of by Committee while submitting their report in favour of the appellants with reference to



the disputed fact that who is the appointing authority to Group C and D whether is it Director or Deputy Director?

15. Such appointment of Committee is by virtue of judicial pronouncements of this Court in earlier litigation. The Director Consolidation has not accepted the Committee's report to the extent that Deputy Director is the competent authority to appoint Group C and D employees in the Consolidation Department. Such contention or statement has been made by the Director Consolidation in the absence of material information.

16. On the other hand to identify whether Deputy Director Consolidation is appointing authority to the post of Group C and D is with reference to 05.04.1971 (Annexure-1 to the writ petition).

17. At this stage, learned counsel for the State submitted that Directorate of Consolidation was created on 11.05.1981, however authorizing Director to appoint Group C and D no material has been placed during the intervening period from the year 1987-1988 in which year the appellant's were appointed on daily basis. Further, as and when the appellant's services were regularized on various date during the period from the year 1993 to 1995. Further, it is noticed that regularization order issued in the



year 1993-95 to the appellants have not been withdrawn/cancelled/modified by the competent authority.

18. Further, impugned action which was subject matter of litigation before the learned Single Judge in CWJC No. 1740 of 2020 is without hearing the petitioners. We have already noticed that appellants have appeared before this court for one or the other reason from the year 1991 and even to this date only for that purpose of whether their appointment is in accordance with procedure or not? Even, if there are irregular procedure in appointing the appellants. The same is required to be regulated in the light of Apex Court's decision in the case of **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors** reported in (1990) 2 SCC 715 reads as under:-

“47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The **corollary** of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.



(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under Article 32 of the Constitution



must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.”

19. Further, we have noticed that Apex Court’s decision in the case of **Secretary, State of Karnataka & Ors Vs. UmaDevi & Ors** wherein Apex Court has specifically given a direction in the month of January 2006 to regularize such of those persons who have rendered 10 years of service with various criteria even the principle laid down in the Uma Devi case is taken into consideration. Still the appellants have good case on merit.

20. In fact Apex Court has made an observation that if any person is regularized the same cannot be reopened. In the present case the appellants services were regularized in the year 1993 to 1995 and the same has not been withdrawn/modified/cancelled by the competent authority. Therefore, one has to draw inference that the appellant’s services were already regularized on various dates during the intervening period from 1993 to 1995.

21. In the light of these facts and circumstances impugned order in writ petition CWJC No. 1740 of 2020 dated 07.08.2019 Annexure-24 is set aside and order of the learned Single Judge dated 20.02.2020 passed in CWJC No. 1740 of 2020 is set aside.



22. In the result, writ petition filed by the appellants stands allowed consequently LPA is allowed.

23. Director consolidation who is stated to be head of the Department as on today, he is hereby directed to extend all service benefits with reference to date of their regularization in the year 1993-1995 and extend all monetary benefits including pay fixation against the post held by the appellants irrespective of Group C or D.

24. On fixation of pay arrears shall be calculated from the date of regularization till date and the same shall be disbursed within a period of three months from the date of receipt of this order, failing which appellants are entitled to interest on arrears @ 8% *per annum* for the reasons that the appellants are knocking the judicial forum for more than three decades. Therefore, it is a fit case for awarding interest in the event of non-payment of arrears of payment before three months.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

abhishek/shoaib

AFR/NAFR	
CAV DATE	
Uploading Date	30.11.2022
Transmission Date	

