

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1546 of 2018

In
Civil Writ Jurisdiction Case No.2181 of 2011

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Kailash Prasad Son of Late Ram Lakhan Prasad, Husband of Late Hemlata Devi, Resident of Mohalla- Naya Tola, Mehsaul, Ward No. 25, Nagar Parishad, Sitamarhi, P.S. and District- Sitamarhi.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director, Secondary Education, Human Resources Department, Bihar, Patna.
3. The Deputy Director, Secondary Education, Bihar Secondary Education, Bihar, Patna.
4. The Regional Deputy Education Director, Tirhut Division, Muzaffarpur.
5. The District Education Office, Sitamarhi.
6. The Headmaster, Ramdeo Baldeo Choudhary Project Girls High School, Bhutahi, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Sagar Singh, Advocate
For the State : Mr. Shashi Shekhar Tiway, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-09-2022

Heard learned counsels for the respective parties.

2. In the instant Letters Patent Appeal, appellant has questioned the validity of the order of the learned single Judge dated 30.06.2017 passed in C.W.J.C. No. 2181/2011.

In C.W.J.C. No. 2181 of 2011, appellant/petitioner has prayed for following reliefs:-



“1. That the above named petitioner seeks to crave the gracious indulgence of this Hon’ble Court for the issuance of an appropriate writ(s)/order(s)/direction(s) as the facts and circumstances of the instant case may require so as to grant the following relief:-

I. To set aside/quash the order dated 30.08.2010 and 22.07.2008 passed by Director Secondary Education (Respondent No. 2) as contained in Memo No. 439 (P) and Memo No. 580 (P) respectively, whereby and whereunder the petition/claim for the recognition of service of the petitioner’s wife has been rejected on the ground that “DAWA APRAPT” according to the recommendation of the three men enquiry committee as well as cabinet decision constitute in the light of order of the Apex Court dated 03.01.2006. It is illegally and erroneously held that there was no evidence/material supplied by the petitioner which it was found that case/claim of the petitioner has been considerable under the accepted policy by the cabinet.

II. To direct the respondent authorities to re-consider the case of the petitioner’s wife regarding recognition of service on the basis of bonafide claim supported by the material available on the record.

III. To direct the respondent/authorities to consider the case of the petitioner as valid and operative in the right prospective manner and pay all the arrears of salary as well as other consequential benefits to the petitioner which has not been paid on account of illegality committed by the respondent



authorities as yet.”

3. Crux of the matter in the present petition is whether the deceased, late Hemlata Devi is entitled to regularization while she was alive or not and further whether the appellant Kailash Prasad who is husband of deceased- Hemlata Devi is entitled to any monetary benefits or not?

4. The learned single Judge has erred in not noticing Annexure-A to the document that her case was rejected only on the score that she failed to submit representation. Merely non-submission of representation for regularization, deceased-employee's grievance relating to regularization cannot be rejected. Official respondent is State and State being a model employer, *suo motu* action should have been taken in respect of regularization of deceased, late Hemlata Devi on par with others as is evident from Annexure-A.

5. In the light of these facts and circumstances, order of the learned single Judge dated 30.06.2017 passed in C.W.J.C. No. 2181 of 2011 stands set aside.

6. The concerned respondent/competent authority is hereby directed to examine the service particulars of deceased- Hemlata Devi read with Apex Court's decisions rendered in the case of *Secy., State of Karnataka V. Uma Devi*



reported in (2006)4 SCC page 1 passed in *CWJC No. 16 of 2021* and *State of Karnataka Vs. M.L. Kesari* reported in *(2010) 9 SCC 247* and policy decision of the State of Bihar in respect of regularization of adhoc/ daily wagers be taken note of and proceed to pass a detailed speaking order with reference to the deceased-employee's service particulars. If the deceased-employee is entitled to regularization prior to date of her death in that event regularization order shall be issued retrospectively. Consequently, service benefits and monetary benefits, if any, shall be calculated and disbursed to the appellant. If deceased-employee is not entitled to regularization before the date of her death in that event also necessary speaking order shall be passed and communicated to the appellant within a period of three months from the date of receipt of this order.

7. Accordingly, the present Letters Patent Appeal stands disposed of.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

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CAV DATE	
Uploading Date	14.09.2022
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