

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.927 of 2018

In

Civil Writ Jurisdiction Case No.800 of 2017

Bindeshwar Mahto, Son of Soman Mahto, Resident of Village- Bathnaha, P.S.
Bathnana, District- Sitamarhi.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur.
4. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. D.K. Sinha, Sr. Advocate
Mr.Kripa Nand Jha, Advocate
For the Respondent/s : Mr. Subodh Kumar, AC to SC-26

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 23-01-2023

Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The present L.P.A. is directed against the judgment
dated 20.03.2018 passed in CWJC No. 800 of 2017 by the
learned Single Judge of this Court whereby and whereunder the



civil writ petition filed by the appellant has been disposed of on the terms mentioned in the impugned judgment.

3. In the writ petition, the petitioner (appellant herein) has sought the following reliefs :

“(i) For issuance of an appropriate direction, order or writ in the nature of ‘certiorari’ quashing the letter no.274 dated 12.02.2014 by which the service of the petitioner for the period from 20.02.1995 to 20.08.2012 has not been counted and thereby treating him a fresh appointee, his entire past services and consequential benefit thereof has been illegally and arbitrarily taken away.

(ii) For further commanding the respondents to count the entire service period of the petitioner with all consequential benefit including payment of salary for the period from 20.02.1995 to 20.08.2012 during which the petitioner was arbitrarily kept out of service by the respondent concerned and after negating the said arbitrary order by this Hon’ble Court, the petitioner has been reinstated back in service.

(iii) For also holding and declaring that once an illegal order of termination is quashed by this Hon’ble Court, it is assumed that the petitioner is holding the said post in the same capacity and thereby entitled to get the full back wages with all consequential benefits.

(iv) For any other relief/reliefs to which the petitioner may be found entitled to, in the facts



and circumstances of the case”.

4. Brief facts of the case are that the appellant was initially engaged as a daily wage worker (road labourer) on Class-IV post and subsequently, he was retrenched. Thereafter, the appellant filed a representation to permit him to continue on daily wage. The Engineer-in-chief cum Additional Secretary, Road Construction Department vide letter dated 20.07.1987 directed the Executive Engineer, Road Division, Sitamarhi to engage the appellant as a daily wager on Class-IV post. The appellant was then appointed as a road labourer vide letter dated 22.06.1987. Subsequently, the Executive Engineer vide its office order dated 24.11.1987 appointed the appellant in the work charge establishment on a regular pay scale. In between, there was some confusion with regard to the appointment of the appellant to the effect that as to whether he had been appointed on compassionate ground or not? The respondent Executive Engineer by letter dated 20.02.1995 terminated the services of the appellant by stating that the appellant had been wrongly appointed on compassionate ground. The said order of termination dated 20.02.1995 was challenged before this Court in CWJC No. 115 of 1997 and the same was disposed of by an order dated 09.09.2010, whereby and whereunder the



Superintending Engineer, Road Construction Department, North Bihar Road Circle, Muzaffarpur was directed to enquire into the genuineness or otherwise of letter no.7846, with a further direction that in case the said letter was found to have been issued by the Engineer-in-chief, Road Construction Department directing appointment of appellant as Road Labourer, appropriate orders be passed in accordance with law within a period of three months from the date of receipt/ production of a copy of the said order.

5. Apparently, the respondents failed to comply with the aforesaid direction issued by this Court leading to the filing of the contempt petition by the petitioner-appellant herein bearing MJC No. 2039 of 2012 which was disposed of as withdrawn by an order dated 23.8.2012 in view of issuance of office order bearing Memo No. 1850 dated 21.8.2012 whereby and whereunder the respondents had appointed the appellant on the vacant post of peon under the Road Division, Sitamarhi. The appellant is said to have joined the said post on 24.8.2012 and thereafter the appellant has been continuously discharging his duty to the satisfaction of the authorities concerned, but his salary has been fixed treating him as a fresh appointee. The appellant filed representation before the various authorities,



however, vide letter no. 274 dated 12.2.2014, the respondent no.3 has communicated to the appellant herein that since the appellant was appointed on the post of peon vide letter dated 21.8.2012 and he had not worked in between the period 20.02.1995 to 20.08.2012, the said period cannot be counted for the purposes of his service period nor he can be paid any salary for the said period.

6. Being aggrieved by the said letter dated 12.02.2014, the petitioner (appellant herein) filed CWJC No.800 of 2017 for quashing the letter no. 274 dated 12.02.2014 by which the services of the appellant for the period 20.02.1995 to 20.08.2012 has not been counted and instead he has been treated as fresh appointee resulting in forfeiture of his entire past services and the consequential benefits. It was further prayed for directing the respondents to pay the salary for the period 20.02.1995 to 20.08.2012, during which the appellant had been arbitrarily kept out of service. The said writ petition was disposed of vide judgment dated 20.03.2018 passed by the learned Single Judge wherein the learned Single Judge directed that the period of service rendered by the appellant from 24.11.1987 to 19.02.1995 should be counted for the purposes of grant of pensionary benefits to the appellant but the other relief



sought by the appellant was denied by the learned Single Judge.

Hence, the present LPA.

7. The learned counsel for the appellant submits that the appellant was kept out of service arbitrarily in between the period 20.02.1995 to 20.08.2012 i.e. from the date of cancellation of appointment of the appellant up to the date of his appointment on the post of peon, hence the appellant is entitled for back wages for the said period as also for all consequential benefits.

8. *Per contra*, the learned counsel for the respondents has submitted that since the appellant has neither challenged the order dated 21.8.2012 by which the appellant has been appointed afresh on the post of peon nor the present case of the appellant is a case of withdrawal of the order dated 20.02.1995 by which the appointment of the appellant was cancelled nor the present case is a case of re-instatement of the appellant, the appellant is neither entitled for continuity in service nor for back wages for the said period w.e.f. 20.02.1995 to 20.08.2012.

9. On a consideration of the materials available on record, we are of the considered opinion that the learned Single Judge has rightly held that the period of service rendered by the appellant at very inception of his career, i.e., from 24.11.1987 to



19.02.1995 should be counted for the purposes of grant of pensionary benefits to the appellant.

10. It is also pertinent to take note of the fact that the appellant's services were dispensed with vide letter dated 20.02.1995 of the Executive Engineer on the ground that the appellant got the job on the basis of forged appointment letters. But during hearing of the matter not a single document has been brought on record to prove the said fact. There is no report regarding forgery being committed by the appellant or any enquiry in this regard as it appears from the materials produced on behalf of the respondents. Moreover, the order dated 20.08.2012 appointing the appellant is completely silent on the past conduct of the appellant and consequent action by the department. It is also not clear how the appellant came to be appointed afresh without any specific order to this effect by this Court. It was not proper for the department to penalize the appellant without any proper enquiry and documentation.

11. Further, it appears that the appellant made a categorical statement in Para 7 of the reply that he was arbitrarily kept out of service from 20.02.1995 to 20.08.2012 and he was not gainfully employed during these period. Therefore, the finding of the learned Single Judge that there is



no pleading in the entire writ petition to the effect that during the said period 20.02.1995 to 20.08.2012, the appellant was not gainfully employed elsewhere is contrary to the pleadings available on records. So, instead of remitting the matter to the learned Single Judge for fresh consideration after passage of time, we feel that the issue relating to payment of back wages should be settled finally.

12. Coming back to back wages, the question would be whether back wages should be awarded fully or only partially (and if so the percentage). It is clear from the facts brought on record that the appellant did not render any service from 20.02.1995 to 20.08.2012. We are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice, if the appellant is paid 50% of the back wages for the period from 20.02.1995 to 20.08.2012.

13. Accordingly, this Court directs the respondent authorities to calculate the amount of back wages as directed herein and pay the same to the appellant within three months from the date of communication of this judgment, failing which the amount will carry interest at the rate of 9% *per annum*.

14. It goes without saying that the appellant would be



entitled for calculation of the period from 24.11.1987 to 19.02.1995 for grant of pensionary benefits.

15. With the aforesaid observations and directions, the present LPA is allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
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