IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.839 of 2019
In
Civil Writ Jurisdiction Case No.7739 of 2015

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Shyam Kishore Singh son of Late Kali Singh, resident of Mohalla- Shri Krishnapuri, Qr. No. L-1/40, P.S.- S.K. Puri, District Patna.

... ... Appellant/s

Versus

1. The State of Bihar
2. Municipal Commissioner, Patna Regional Development Authority Dissolved/ Patna Municipal Corporation, Patna
3. The Controller of Finance and Accounts, Patna Regional Development Authority Dissolved/ Patna Municipal Corporation, Patna

... ... Respondent/s

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with

Letters Patent Appeal No. 1010 of 2019
In
Civil Writ Jurisdiction Case No.7739 of 2015

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Ram Maya Devi, Wife of Late Ram Ballabh Prasad Singh, resident of Mohalla Khasmahal, Road No. 4, Chiraiyatar, Patna- 800001.

... ... Appellant/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Urban Development and Housing New Secretariat, Patna.

2. Municipal Commissioner, Patna Regional Development Authority Dissolved/Patna Municipal Corporation, Maurya Lok Complex, Block - C, 2nd Floor, Dakbunglow Road, Patna – 800001.

3. The Controller of Finance and Accounts, Patna Regional Development Authority Dissolved/Patna Municipal Corporation, Maurya Lok Complex, Block - C, 2nd Floor, Dakbunglow Road, Patna – 800001.

... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 839 of 2019)

For the Appellant/s	:	Mr. Shravan Kumar Singh, Sr. Advocate
		Mr. Dinesh Maharaj, Advocate
		Mr. Krishna Kumar Singh, Advocate
		Mr. Shyama Kant Singh, Advocate
For the Respondent/s	:	Mr. Vindhyachal Singh, Sr. Advocate
		Mr. Ranjeet Kumar Pandey, Advocate
		Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-11-2023

Petitioner Nos. 1 and 5 in the writ petition are the appellants in the separate appeals filed against the judgment impugned. Petitioner Nos. 1 to 6 in the writ petition had sought for the benefits of Assured Career Progression (for brevity "ACP") Scheme applicable to the Government Employees of the State of Bihar. Petitioner Nos. 2, 3 and 6 were found to have filed earlier writ petitions, which was not disclosed in the writ petition. The 5th petitioner in the writ petition was found to have filed another writ petition CWJC No. 6656 of 2015 in which there was a claim of ACP.

2. The writ petition was dismissed also on the ground that the petitioners had retired and were no longer in service when the ACP Scheme was implemented in the Patna Municipal Corporation (for brevity "the Corporation"). In so far as Petitioner Nos. 2, 3 and 6, there is no appeal filed. The 4th petitioner was the successor of one deceased employee who had not produced the succession certificate. The 4th petitioner also has not filed any appeal. The appeals are only by the 1st

petitioner and the 5th petitioner.

3. Learned counsel for the appellants submits that the Corporation employees were made entitled to ACP benefits as on 2006, as is evident from Annexure-1 produced in the writ petition. The very same scheme as applicable to the Government employees were brought in force. It is also pointed out that in LPA No. 1010 of 2019 by affidavit dated 12.09.2022, Government orders dated 10.10.2017 & 06.04.2022, by which which the ACP Scheme was retrospectively made applicable to retired government employees, are also produced. This enabled those employees who had retired also to the benefits of ACP retrospectively. As far as the finding that the 5th petitioner had filed another writ petition that was for retirement benefits of her deceased husband and not the benefit of ACP.

4. Learned Senior Counsel appearing for the Corporation submits that the writ-petitioners were never employees of the Corporation and were employees of the Patna Regional Development Authority (for brevity “PRDA”). It is, however, submitted that the order of 2006 was issued by the PRDA, which has been adopted by the Corporation in the year 2007 after the Corporation succeeded to the PRDA.

5. Admittedly, there was no ACP Scheme in the

PRDA at the time when one of the writ-petitioners and the husband of the other were employed, nor even when they retired in the year 2002. Appellant in LPA No. 839 of 2019 is said to have retired on 22.08.2002 and the husband of the appellant in LPA No. 1010 of 2019 on 22.10.2002. The ACP Scheme came to be adopted by the PRDA only in the year 2006. The retrospective effect given to the scheme was only for government employees, who were in employment when the scheme came into force in the Government. It is pertinent that even according to the affidavit the order of 06.02.2022 was with respect to a government employee who retired on 30.01.2015. Moreover, they were government employees and not employees of the Corporation or the erstwhile PRDA. Hence, as on the date of adoption of the Scheme of 2006 since the appellants were not employed with the PRDA, they cannot claim retrospective application of the Scheme.

6. We find force in the contention of the respondent Corporation that even at the time of adoption of the scheme it applied only to the employees existing in employment as on the date of adoption, which was in 2006, after the retirement of the appellant and the husband of the other appellant.

7. The Corporation was formed in the year 2007 when

the Corporation also adopted the very same ACP Scheme and by communication dated 22.09.2008 produced as Annexure-2, it was specified that it would be applicable only to the existing employees. The said order was never challenged by the appellants. The affidavit dated 12.09.2023 only produces a document which indicates that government employees were given the benefit retrospectively. However, that does not flow automatically to the Corporation employees unless the Corporation takes a decision to grant the benefit retrospectively to its employees, or to the employees of the PRDA, which has been taken over by the Corporation subsequently.

8. We cannot but notice that the judgment handed over to us to dispel the ground that there was an earlier writ petition filed for the same relief of ACP does not dispel it. Therein, it is seen that the writ petitioner had withdrawn the case on the submission that her grievances were redressed. This does not indicate that she had not prayed for the relief of ACP also in the earlier writ petition. In any event, when the earlier writ petition of 2015 was filed, it was incumbent upon the writ petitioner to raise all claims entitled to her at that point of time. If not so raised, then there is a presumption of waiver and in any circumstance, this Court could refuse to exercise the discretion

to invoke the extraordinary remedy.

9. We hence, find no substance in the grounds raised by the appellants. The appeals stand dismissed.

10. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

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