

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.185 of 2018
In
Civil Writ Jurisdiction Case No.1791 of 2008

1. The State Of Bihar
2. The Commissioner-cum-Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna
4. The Chief Engineer Mechanical Public Health Engineering Department, Bihar, Patna.
5. The Regional Chief Engineer, Public Health Engineering Department, Muzaffarpur.
6. The Superintending Engineer, Public Health Engineering Circle Darbhanga, District-Darbhanga.
7. The Executive Engineer, Public Health Engineering Division, Samastipur, District-Samastipur.
8. The Sub-Divisional Officer, Public Health Engineering Sub-Division, Rosera, Samastipur, District-Samastipur.

... .. Appellant/s

Versus

Birendra Kunwar, Son of Sri Chandrea Deo Kunwar, Resident of Village-Mahishi P.S.-Bibhutipur, District-Darbhanga, at Present Posted and Working as Pumping Khalasi, Gramin Water Supply Scheme, Bibhutipur, District-Samastipur Under Public Health Engineering Division, Samastipur, District-Samastipur, District-Samastipur.

... .. Respondent/s

with
Letters Patent Appeal No. 1792 of 2018
In
Civil Writ Jurisdiction Case No.8777 of 2017

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer- in-chief-cum- Special Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Motihri.
6. The Executive Engineer, Public Health Division, Dhakha, Distict- East Champaran.
7. The Assistant Engineer, Public Health Sub-Division, Chhauradano, District-



East Champaran at Motihari.

... .. Appellant/s

Versus

Jawahar Lal Malakar s/o- Late Jageshwar Malakar, R/o-village Kurhan, P.O. and P.S.- Sahebpur Kamal, District- Begusarai, Presently Working as Tube Well Khalasi/Key Man-cum-Chaukidar, Public East Champaran at Motihari
... .. Respondent/s

with

Letters Patent Appeal No. 412 of 2022
In
Civil Writ Jurisdiction Case No.13462 of 2013

1. Tarakant Pathak S/o Late Tej Narayan Pathak Resident of Village- Chacharaha, P.S.- Basopatti, District- Madhubani.
2. Amarkant Mishra S/o Late Baban Mishra Resident of Village- Mujauna, P.S.- Samastipur Muffasil, District- Samastipur.
3. Prabhakar Mishra S/o Haribansh Mishra Resident of Village- Gitadewadha, P.S.- Rosra, District- Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health and Engineering Department, Vishweshariya Bhawan, Patna.
2. The Principal Secretary, Public Health and Engineering Department, Vishweshariya Bhawan, Patna.
3. The Chief Engineer, Public Health and Engineering Department, Vishweshariya Bhawan, Patna.
4. Superintending Engineer, P.H. Circle, Darbhanga.
5. The Executive Engineer, P.H. Division, Darbhanga.

... .. Respondent/s

with

Letters Patent Appeal No. 457 of 2022
In
Civil Writ Jurisdiction Case No.195 of 2018

1. Ganesh Mahto S/o Babu Lal Mahto @ Bauye Lal Mahto, Resident of Village- Mahmad Dumarakor @ Rampur Parori (East), P.S.- Sitamarhi @ Punaura, Dist.- Sitamarhi.
2. Ram Sobhit Rai, S/o Jagdeo Rai @ Jagdev Ray, Resident of Village- Bhadiyal @ Bhadian, P.S.- Nanpur, District- Sitamarhi.
3. Jaikant Yadav, S/o Sri Mani Lal Yadav @ Maneelal Yadav, Resident of Village- Banka Bishanpur, P.S.- Bishanpur, District- Madhubani at Present Lalbagh, Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health and



Engineering Department, Vishweshariya Bhawan, Patna.

2. The Principal Secretary, Public Health and Engineering Department, Vishweshariya Bhawan, Patna.
3. The Chief Engineer, Public Health and Engineering Department, Vishweshariya Bhawan, Patna.
4. Superintending Engineer, P.H. Circle, Darbhanga.
5. The Executive Engineer, P.H. Division, Darbhanga.
6. Tarakant Pathak, son of late Tej Narayan Pathak, resident of Village-Chacharaha, P.S.- Basopatti, District- Madhubani.
7. Amarkant Mishra, son of late Baban Mishra, resident of Village- Mujauna, P.S.- Samastipur Muffasil, District- Samastipur.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 185 of 2018)

For the Appellant/s : Mr. Vishambhar Prasad AC to AAG- 5
Mr. Alok Ranjan, AC to AAG-5

For the Respondent/s : Mr. Gayanendra Roy, Advocate

(In Letters Patent Appeal No. 1792 of 2018)

For the Appellant/s : Mr. Vishwambhar Prasad Ac To Aag 5

For the Respondent/s : Mr.

(In Letters Patent Appeal No. 412 of 2022)

For the Appellant/s : Mr. Gajendra Kr. Jha, Advocate

For the Respondent/s : Mr. Vishambhar Prasad AC to AAG- 5
Mr. Alok Ranjan, AC to AAG-5

(In Letters Patent Appeal No. 457 of 2022)

For the Appellant/s : Mr. Gajendra Kr. Jha, Advocate

For the Respondent/s : Mr. Vishambhar Prasad AC to AAG- 5
Mr. Alok Ranjan, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

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

Date : 20-04-2023

L.P.A. No. 457 of 2022 (Ganesh Mahto & two others vs. The State of Bihar & Others)

In the instant L.P.A., appellants have assailed the order of the learned Single Judge dated 28.07.2022 passed in C.W.J.C. No. 195 of 2018.

In the writ petition (C.W.J.C. No. 195 of 2018),



petitioners (appellants herein) have prayed for following reliefs:-

"That, this writ application is being filed in the nature of mandamus or any other appropriate writ/ writs, direction/ directions, order/orders for commanding the respondents to release the difference of salary to the petitioner for the period 14.7.06 to 19.6.14 in terms of the judgment and order passed in C.W.J.C. No. 7211/ 2013 followed by policy decision of the State Government contained in Memo no. 925 dt. 16.11.13 and release the difference of salary till the date of his regularization and also extend the benefits of ACP/ MACP Scheme from the due date of entitlement i.e. benefits of ACP w.e.f. January 2000 and the benefits of MACP from January 2008, monetary benefits payable from 2009, in terms of the Government resolution dated 17.10.13.

This writ application is also being filed for other reliefs as well.

The petitioners were initially appointed on muster roll and were later taken in work charge establishment in a regular pay scale on the same post, in the year 1988. After some time the petitioners were subjected to reversion in the year 2002, however their status were protected under the order passed by this Hon'ble Court. Under the interim order of this Hon'ble Court, the petitioners got regular pay till 13.7.2006 i.e. till the disposal of the writ application filed on behalf of the petitioners. The matter of remained pending for consideration before the respondents and this Hon'ble Court in CWJC No. 13462/13. During the pendency of the said writ application, the Government resolved to regularize the services of the work charge employees. Accordingly service of the petitioners were regularized vide order dated 20.6.14 in term of the said resolution. However the benefits of difference of salary for the period 14.7.2006 till the date of regularization was not released apart from the benefits of ACP/ MACP Scheme, contrary the



order dated 16.11.13 followed by the judicial pronouncements.

2. That, the petitioners seeks indulgence of this Hon'ble Court for the following reliefs:-

I. The respondents be commanded to release the difference of salary to the petitioner for the period 14.7.06 to 19.6.14 in term of the judgment and order passed in C.W.J.C. No. 7211/2013 followed by policy decision of the State Government contained in Memo no. 925 dated 16.11.13 and release difference of salary till the date of his regularization.

II. The respondents be commanded to extend the benefits of ACP/MACP Scheme from the due date of entitlement i.e. benefits of ACP w.e.f. January 2000 and the benefits of MACP from January 2008, monetary benefits payable from 2009.

III. The petitioners be extended any other relief/reliefs for which they found entitled."

Learned Single Judge rejected petitioners' claim.

Hence, the present petition.

Core issue involved in the present *lis* is whether appellants are entitled to difference of salary from 14.7.06 to 19.6.14 and further entitlement of ACP/MACP benefits or not?

Undisputed facts are that appellants joined service as daily wagers. Due to non-regularization of their services, they approached this Court. During pendency of the litigation, respondents have regularized the services of the appellants on 20th June, 2014. The grievance of the appellants is that their juniors have been regularized in service in the month of November, 2006



and they are also entitled to regularization from the month of November, 2006 and difference of salary during the intervening period from July, 2006 to June, 2014. It is to be noted that appellants' services have been regularized on 20th June, 2014 vide Annexure-3 to the writ petition. Appellants have not assailed prospective regularization w.e.f. 20th June, 2014 and seeking retrospective regularization at par with their juniors whose services were regularized in the month of November, 2006. Salary attached to a post could be claimed only as and when an employee holding the post in a substantive capacity. In the present L.P.A., appellants entered into substantive post only on 20th June, 2014, the date on which their services were regularized, therefore, they are not entitled to salary attached to the regularized post and further they are not entitled to arrears of salary as claimed by them. At the best, they are entitled to minimum pay scale attached to the post in the light of Apex Court's decision rendered in the case of *State of Punjab & Others V. Jagjit Singh & Others* reported in *(2017) 1 SCC 148*. In this regard, appellants are permitted to make a detailed representation and the concerned respondent would consider the same.

Insofar as claim of ACP/ MACP benefits are concerned, the concerned respondent was required to take note of the service rendered by the appellants on regular basis w.e.f. 20th



June, 2014 in a particular cadre. If they fulfill the requisite criteria in that event concerned respondent shall extend ACP/MACP benefits. If they are not entitled to ACP/MACP benefits w.e.f. 20th June, 2014, the date on which their services were regularized, in such circumstances, the concerned respondent is hereby directed to pass a speaking order and communicate the same to the extent that the appellants do not fulfill the relevant criteria for the purpose of ACP/ MACP benefits.

With the above observations, order of the learned Single Judge dated 28.07.2022 is modified. Accordingly, L.P.A. No. 457 of 2022 stands disposed of.

L.P.A. No. 412 of 2022 (Tarakant Pathak & two others vs. The State of Bihar & Ors.)

Heard I.A. No. 01 of 2022 for condonation of delay in filing L.P.A. No. 412 of 2022.

Delay is condoned for the reasons that identical matters are pending consideration before this Court.

Accordingly, **L.P.A. No. 412 of 2022** stands disposed of in terms of L.P.A. No. 457 of 2022.

L.P.A. Nos. 185 of 2018 (The State of Bihar & Others vs. Birendra Kunwar) & 1792 of 2018 (The State of Bihar & others vs. Jawahar Lal Malakar)

These two L.P.As. have been filed by the State.



The Learned Single Judge has allowed the relief(s) sought by the respondents-employees to the extent that they are entitled to arrears of salary during the un-regularized period. No employee is entitled to salary attached to the post for which they were appointed on *ad hoc* basis, unless and until they are occupying the post in a substantive capacity, they are not entitled to salary attached to the post. In the present L.P.As. respondents have not assailed the order of regularization issued in the year 2014 - 2015 while reiterating their claim that they are entitled to regularization from the month of November, 2006 on par with the similarly situated persons. In the absence of challenge to the regularization order issued in the year 2014 to 2015 and seeking regularization w.e.f. November, 2006 and in the event they are entitled to regularization from November, 2006, the respondents are not entitled to salary attached to the post during the intervention period from the year 2002 to 2014 or the date on which their services were regularized, therefore learned Single Judge has committed glaring error in granting relief to the respondents insofar as arrears of salary during the period from 2002 to 2014 and it is not permissible under law. That apart, the respondents have not pointed out any statutory provision to the effect that they are entitled to salary attached to the post during the intervening period from the year 2002 to 2014. The appellant-State



have made out a *prima facie* case so as to interfere with the order of the learned Single Judge dated 28.06.2017 and 28.08.2018 respectively and they are set aside. Insofar as other reliefs are concerned, respondents are permitted to submit a detailed representation and observations made in L.P.A. No. 457 of 2022 may be taken note of by the competent authority.

Accordingly, **L.P.A. Nos. 185 of 2018 & 1792 of 2018** stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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