

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1324 of 2017

In
Civil Writ Jurisdiction Case No.10378 of 2011

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Baliram Singh Son of Late Ram Brikash Singh, Resident of Village - Vishnupur Pakri, P.S. Pakri Patna, District - Patna in capacity of General Secretary, Bihar State Industrial Development Corporation situated at Indira Bhawan, R.C. Singh Path, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. Managing Director, Bihar State Industrial Development Corporation, Ram Charitra Path, Bailey Road, Patna.
3. Industrial Commissioner, Government of Bihar, Patna.
4. Principal Secretary, Finance, Government of Bihar, Patna.
5. Chief Secretary, Government of Bihar, Patna.
6. The District Education Officer, Gaya, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Dinu Kumar, Advocate Mr.Vardaan Mangalam, Advocate Ms.Ritika Rani, Advocate
For the Respondent No.2	:	Dr.Anand, Advocate
For the State:	:	Mr.Rakesh Ambastha, AC to AAG7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-02-2023

In the instant LPA, appellant has assailed the order of learned Single Judge dated 21.08.2017 passed in CWJC No. 10378 of 2011. In the writ petition grievance of the appellant is that he is entitled to have the benefit of 5th Pay Revision Commission which was notified on 01.10.2008 while giving effect on 01.01.1996 and 6th Pay Revision Commission notification dated 01.10.2010 which



would be effective from 01.01.2006. The appellant has attained age of superannuation and retired from service on 28.02.2013.

2. Learned Single Judge declined to grant relief to the appellant while stating as under:-

“6. In the instant case, the resolution of the BSIDC is not at par with the resolution of the BSFC. The BSIDC merely adopted the provisions of the Bihar Service Code and T.A. Rules without however taking into account the subsequent amendments as may be made from therein time to time. Learned counsel for the BSIDC relies on a Division Bench judgment in LPA No. 1558 of 2011 (Namindra Singh vs. The State of Bihar) wherein the relevant resolution of the Bihar State Electronic Development Corporation was on similar lines as in the present case. It was held therein that the provisions of the Bihar Service Code would be applicable as they existed on the date when the resolution was passed, observing as follows:

“We see no merit in this Appeal. The above referred order only indicates that whatever service Rules and financial Rules of the State Government were applied to the employees of the Corporation, such application was approved by the Board of Directors of the Corporation. Nothing in the said order indicates that the Corporation has/had adopted the provisions contained in the Bihar Service Code as modified or altered from time to time, unless the Resolution passed by the Board of Directors expressly or by necessary application provides that the Provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation the contention cannot be countenanced”.

7. The above decision was applied by a co- rdinate Bench of this Court in C.W.J.C. No. 10502 of 2013 (Shri Sachchidanand Sinha



vs. The State of Bihar & others.) which was a matter concerning the BSIDC's resolution dated 22.12.1961 which was on similar lines as in the present case. Relying on Namindra Singh's case (supra), it was held as follows:

"In view of the subsequent decision taken by this Court and the resolution passed by the Corporation, it does not indicate that the future amendment in the Bihar Service Code would automatically apply to the employees of the Corporation. This Court is of the view that whatever the provisions of the Bihar Service Code was there at the time of resolution, will only apply to the employees of the Corporation in absence of any further resolution thereby adopting the amended provisions of the Service Code. This Court has great reservation in accepting the submission of the petitioner that the age of superannuation of employees of the Corporation will be treated to have been extended to 60 years. In view of the aforesaid discussion, this Court is of the view that the petitioner is not entitled to the relief sought for, first it suffers from delay and laches and secondly on merit also."

3. Before taking note of how the learned Single Judge has committed error it is necessary to take note of the service conditions of the corporation employees like appellant and it is governed by resolution of the Board dated 22.12.1961 vide Annexure-2 to the writ petition. Para 3 of the resolution reads as under:-

"3. Until such rules are framed by the corporation, the conditions of service of employees referred to in sub-Para (ii) above will be in accordance with the Bihar Service Code and T.A Rules under the Government of Bihar."



4. In the light of aforementioned resolution respondent-corporation have not undertaken any exercise in issuing regulations insofar as prescribing service conditions of its employees even to this day as is evident from the supplementary counter affidavit filed by second respondent – Mr. Dilip Kumar, Managing Director, BSIDC Ltd. in Para 6 and it is admitted that they have adopted the Bihar Service Code and Ancillary Rules of the State Government for the purpose of service conditions of its employees.

5. In this backdrop, insofar as extension of 5th & 6th Pay Revision Commission to its employees cannot be postponed for decades for the reasons that 5th Pay Revision Commission was notified on 01.10.2008 while giving effect from 01.01.1996 and 6th Pay Revision Commission was notified on 01.10.2010 while giving effect from 01.01.2006, these two Pay Revision Commission has been given effect in the respondent-corporation with effect from 01.04.2019 *vide* resolution dated 11.04.2019. The reasons assigned for giving effect to the aforesaid two Pay Revision Commission only in the year 2019 is that there were financial constraints.

6. In the absence of framing of regulations and the fact that they have passed a resolution on 22.12.1961 in adopting the



State Government relevant rules, as a model employer corporation should have given effect to the 5th & 6th Pay Revision Commission to its employees from 01.01.1996 and 01.01.2006. On the other hand, it has been deferred for more than decades while giving effect to Pay Revision Commission only on 11.04.2019. While giving effect from 01.04.2019, the appellant has been denied benefit of both Pay Revision Commission with reference to the fact that he had attained age of superannuation and retired from service on 28.02.2013.

7. Learned Single Judge has committed error in not taking note of the aforementioned dates and events and so also even to this day respondent-corporation have not framed their own regulations governing its employees. On the other hand, whatever the service conditions is governed by the State Government employees have been extended or adopted pursuant to the resolution dated 22.12.1961.

8. In the light of these facts and circumstances appellant has made out a *prima facie* case so as to interfere with the order of learned Single Judge dated 21.08.2017 passed in CWJC No. 10378 of 2011. Hence, present LPA stands allowed. The concerned respondent-corporation is hereby directed to extend 5th & 6th Pay Revision Commission benefits with effect from 01.01.1996 and



01.01.2006 respectively to the appellant and calculate the arrears and pay the same to the appellant within a period of three months from the date of receipt of this order, failing which appellant will be entitled to interest @8% per annum on the entire arrears amount, in the light of Apex Court decision in the case of **Vijay L. Mehrotra Vs. State of Uttar Pradesh & Ors** reported in **(2001) 9 SCC 687**.

9. Personal appearance of Mr. Dilip Kumar, Managing Director, BSIDC Ltd. stands dispensed with in view of disposal of LPA.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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