

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.287 of 2020

In

Civil Writ Jurisdiction Case No.14907 of 2019

Indrajeet Kumar Singh S/o Late Kamleshwari Prasad @ Kamleshwari Prasad Singh, R/o Maliyapur, P.S.- Maliyapur, District- Jamui.

... .. Appellant/s

Versus

1. The Department of Energy through the Principal Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Energy Govt. of Bihar, Patna.
3. The Bihar State Hydro Electric Power Corporation Limited through its Managing Director, Patna.
4. The Managing Director Bihar State Hydro Electric Power Corporation Limited, Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna.
5. The Manager (Personnel and Administration) Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Brij Bihari Tiwary, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad, AAG- 7
	:	Mr. Shankar Kumar, AC to AAG-7
For the Respondent Nos.:	:	Mr. P.N. Shahi, Sr. Advocate
3 to 5	:	Mr. Mritunjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 03-07-2024

The appellant has assailed the order of the learned Single Judge dated 15.06.2020 passed in CWJC No.14907/2019. The appellant was initially appointed in the Bihar State Pharmaceutical, Chemical Development Corporation Limited. Thereafter, he was on deputation to the



Bihar State Hydro Electric Power Corporation Limited (for short, 'power corporation'). He was on deputation to power corporation and thereafter, his services were observed on 07.02.2018. Consequently, he was an employee of the power corporation, he has attained the age of superannuation and retired from service on 31.01.2019. In this backdrop, question for consideration is whether appellant is entitled to gratuity amount or not. During pendency of the present litigation, the respondent-power corporation has extended a sum of Rs.10,00,000/- (ten lakhs) towards gratuity. The same was objected by the appellant to the extent that the appellant is entitled to a sum of Rs.20,00,000/-(twenty lakhs) towards gratuity in the light of the Central Government policy laid down in the amended Payment of Gratuity Act, 1972, which was introduced w.e.f. 29.03.2018. In this backdrop, whether appellant is entitled to gratuity amount of Rs.20,00,000/- (twenty lakhs) or Rs.10,00000/- (ten lakhs) is the issue.

2. On 03.04.2024 we have passed the following orders:-

“Core issue involved in the present lis is whether appellant is entitled to enhanced gratuity amount of Rs. 20,00,000/- (Rs. Twenty Lakh) with reference to Notification dated 29.03.2018 read with the fact that his services were absorbed with the Respondent- Bihar



State Hydroelectric Power Corporation Limited on 07.02.2018 and the fact that he has attained age of superannuation and retired from service on 31.01.2019.

2. Today, learned counsel for the Respondent pointed out the Resolution insofar as extending amended gratuity payment was adopted on 15.09.2022. Resolution reads as under:

संकल्प संख्या 103/596/2022

विषय: निगम के सेवकों को ग्रुप ग्रेच्यूटी के मद में भारतीय बीमा निगम के पॉलिसी के अन्तर्गत सेवांत लाभ के भुगतान के संबंध में।

निदेशक मंडल द्वारा कार्यमद पर चर्चा की गई तथा निम्नलिखित सकल्प सर्वसम्मति से पारित किया गया -

"संकल्प लिया जाता है कि *Payment of Gratuity Act, 1972* के तहत निगम द्वारा भारतीय जीवन बीमा निगम से ₹ 20.00 लाख (रूपये बीस लाख) की अधिसीमा के अंतर्गत ली गई पॉलिसी के प्रिमियम राशि के भुगतान को यथावत रखते हुए उक्त अधिसीमा के तहत प्राप्त भुगतान को समय-समय पर सेवा निवृत्त होने वाले पॉलिसी से सबद्ध कर्मियों को भुगतान किया जाय।"

3. Taking note of the aforementioned Resolution and its meeting dated 15.09.2022 it is not with retrospective effect viz., w.e.f. 29.03.2018 so as to extend the enhanced gratuity amount of Rs. 20 Lakh to the appellant, since, he has attained age of superannuation and retired from service on 31.01.2019. Prima facie, appellant is not entitled to enhanced gratuity of Rs.20 Lakhs. However, counsel for appellant insisting for adjournment.

4. Case is admitted for hearing. Re-list this matter on 03.07.2024."



3. Today, learned counsel for the appellant could not apprise this Court under which statutory provision, he has a legal right to claim a sum of Rs.20,00,000/- (twenty lakhs) towards gratuity amount, except relying on the Payment of Gratuity Act, 1972 and relied on the Hon'ble Supreme Court decision in the case of *State of Bihar and Others Vs. Mahendra Kumar Mishra and Others* decided on 04.03.2020, CWJC No. 8583/2019 decided on 25.06.2019 in the case of *Deepa Rani Dey Vs. the State of Bihar and Others*, WP(C) No.1054/2019, *Sri Bhupati Debnath Vs. The State of Tripura (High Court of Tripura, Agartala)* decided on 13.02.2020, WP(C) No.617/2023 *Dr. Prashant Kumar Vs. The State of Tripura and Others (High Court of Tripura, Agartala)* decided on 24.01.2024.

4. *Per contra*, learned counsel for the respondent-power corporation resisted the aforementioned contention to the extent that the appellant is not entitled to gratuity amount of Rs.20,00,000/- (twenty lakhs). On the other hand, he is entitled to only a sum of Rs.10,00,000/- (ten lakhs) and it has been paid. In order to over come the decision cited on behalf of the appellant, he is relying on Hon'ble Supreme Court in the case of **Mohd. Islam and Others Vs. Bihar State Electricity Board**



and Others reported in **(2022) 9 SCC 67** (para 11).

5. Heard learned counsel for the respective parties.

6. Respondent-Power Corporation have passed resolution insofar as payment of gratuity vide Resolution No. 16/89 dated 02.12.1985 to the extent of payment of gratuity to the employees of the corporation through the policy of the LIC Corporation and maximum limit of the policy of gratuity of the employees of the corporation from LIC till 12.08.2020, it was a sum of Rs.10,00000/- (ten lakhs). Thereafter, they have passed identical Resolution No. 103/596/2022 adopting the Payment of Gratuity Act, 1972. For the first time, insofar as extending a sum of Rs.20,00,000/- (twenty lakhs) extract of the resolution is cited (supra). Therefore, one has to draw inference that Power Corporation for the purpose of extending gratuity to its employees. They have passed resolution on 02.12.1985 with the memorandum of understanding read with the LIC policy and this has not been disputed by the learned counsel for the appellant. Thereafter, the consequent resolution in respect of adoption of Payment of Gratuity Act, 1972 was only on 15.09.2022. In the light of aforementioned resolutions read with the service particulars of the appellant to the extent that services



were observed by the Power Corporation on 07.02.2018 followed by his retirement on 31.01.2019. During the intervening period from 07.02.2018 to 31.01.2019, power corporation have not adopted the Payment of Gratuity Act, 1972. On the other hand, they adopted, for the first time, on 15.09.2022. Faced with these dates and events and the fact that appellant could not apprise this Court with any document to establish. He has no legal and statutory right to claim for gratuity amount of Rs.20,00,000/- (twenty lakhs). It is to be noted that adoption of the Payment of Gratuity Act, 1972 was only on 15.09.2022 and it is much after retirement of the appellant.

6. In this backdrop, the cited decisions on behalf of appellant are not applicable to the case in hand or not ?

7. Having regard to the aforementioned service condition of power corporation employees, insofar as payment of gratuity to its employees is only by the aforementioned resolution, only the first resolution is applicable to the appellant. Having regard to the applicability of first resolution, appellant has been paid a sum of Rs.10,00,000/- (ten lakhs) for payment of Rs.20,00,000/- (twenty lakhs) towards gratuity amount is concerned, appellant has not apprised with reference to any



vested legal right with him. The cited decisions are not relating to the power corporation, it all depends on respective Public Sector / State Subsidiary Organization like the present case is relating to Power Corporation. They have their own service regulations. Therefore, one cannot come to the conclusion that the Payment of Gratuity Act, 1972 is applicable to the employees of the Power Corporation invariably. Having regard to the fact that on 02.08.1985 resolution insofar as payment of gratuity and it is to be noted that resolution is not relating to the Adoption of the Payment of Gratuity Act, 1972. As on date of aforementioned Resolution, 1985 the Payment of Gratuity Act, 1972 was very much in vague, if the corporation intends to adopt the Payment of Gratuity Act, 1972 in the year 1985. In that event, we could have examined whether appellant is entitled to payment of gratuity at Rs.20,00,000/- (twenty lakhs), even in the absence of second resolution. Therefore, the cited decision are not applicable and they are not relating to Bihar State Hydroelectric Power Corporation Ltd.

8. Learned counsel for the respondent-power corporation relied on **Mohd. Islam and Others** cited (supra) **para 11** read as under:

“In that regard, the fact which cannot be disputed is that even though at an earlier



point in time the Electricity Board had adapted the Bihar Service Code of the State Government due to which all service conditions, rules and notifications applicable to the employees of the State Government had become applicable to the employees of Respondent 1 Electricity Board, Respondent 1 Electricity Board had thereafter in exercise of the power conferred under Section 79(c) of the Electricity (Supply) Act, 1948 had framed its own service regulations. The indisputable position is that, the appellants, therefore, were guided by the Service Regulations of Respondent 1 Electricity Board. Therefore, the notification relating to service conditions if any issued by the State of Bihar to regulate the service conditions of its employees was neither ipso facto nor mutatis mutandis applicable to the employees of Respondent 1 Electricity Board unless the same was adapted by Respondent 1 Electricity Board. Even if adapted, it would depend on the manner and to the extent adapted.”

9. Hon’ble Supreme Court in the case of ***Nair Service Society Vs. Dr. T. Beermasthan, (2009) 5 SCC 545***, in para-48, has held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no



challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

10. Taking note of the principle laid down by the Hon'ble Supreme Court in the aforementioned decisions, we have to draw inference that straight away judicial pronouncements can not be taken note for the purpose of extending any relief to a litigant, unless and until, he or she establishes legal/statutory right under provision of law. It is to be noted that 1985 resolution is the only document under which the appellant has right to claim gratuity and it has been extended. The second resolution passed on 15.09.2022 is not applicable to the appellant, having regard to the fact that he has attained the age of superannuation and retired from service on 31.01.2019.

11. In view of these facts and circumstances, judicial pronouncement cited on behalf of the appellants are not assisting the appellants' case in view of resolutions of the Power Corporation dated 31.01.2019.

12. Accordingly, no interference is called for insofar as the order of the learned Single Judge, LPA stands dismissed.



13. Pending I.A., if any, stands dismissed.

14. At this juncture, learned counsel for the appellant submitted that at least appellant is entitled to interest on the belated settlement of Gratuity amount of Rs.10,00,000/- (ten lakhs). The concerned Corporation-respondent is hereby directed to pay interest at the rate of 8% per annum on the belated settlement of gratuity amount. It is also learnt that 3% interest is stated to have been extended, if it is so, the corporations are hereby directed to pay further 5% interest in addition to 3% and the same shall be disbursed in favour of the appellant within a period of three months from the date of receipt of the order. If the appellant is entitled to any other financial and interest on belated settlement the same shall be taken note of and disburse the same within the stipulated time.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

