

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.97 of 2021

In

Civil Writ Jurisdiction Case No.19803 of 2011

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1. The Administrator, Bihar State Road Transport Corporation Parivahan Bhawan, Veerchand Patel Marg, Patna
 2. The Chief Operation Officer, Bihar State Road Transport Corporation, Parivahan Bhawan, Veerchand Patel Marg, Patna.

... .. Appellant/s

Versus

1. Sadan Kumar Sinha S/o Lalita Prasad Resident of P.O.- Papraur, P.S.- Barauni, District - Begusarai, Bihar.
2. Ratneshwar Prasad, S/o Rameshwar Prasad Singh Resident of Village-Bamraha, P.S.- Khagaria, District - Khagaria, Bihar.
3. Bhagwan Prasad, Late Murlidhar Prasad Resident of Priya Nagar, P.O.- Sugma, P.S.- Salkhua, District - Saharsa, Bihar.
4. Ganesh Lal, S/o Kali Sah Resident of At - Maranchi, P.S. -Hathidah, District - Patna, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20280 of 2011

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1. Abhimanu Kumar Chaudhary S/o Late Yamuna Prasad Chaudhary (Retired Sambahak), resident of New Sipahi Tola, Maranga Road, P.O.- Purnea, P.S.- Kewat, District-Purnea, Division- Purnea.
 2. Deo Nandan Kumar (Retired), S/o Late Basudeo Kumar Resident of Vill.- Prasanda, P.O.- Hirani, Present Beri, P.S.- Sidhoya Barchman, Kusheshwar Asthan, District-Darbhanga, Present Address- At-Jay Prakash Nagar Colony Road, Purnea, District- Purnea, Division-Purnea.
 3. Bhola Prasad Das, S/o Dhanusdhari Sah Resident of Vill.- Khaira, P.O.- Khaira, P.S.- Falka, District- Katihar, Division- Purnea.
 4. Ajay Kumar, S/o Late Bhagwan Prasad Singh Vill.- Chiura, P.O.- Khusrupur, P.S.- Fagua, District-Patna, Division- Purnea.
 5. Deep Narayan Prasad Singh, S/o Sri Kapildeo Prasad Singh Resident of At Vill.- Sahatha, P.O.- Sahatha, P.S.-Lalganj, Present Bhagwanpur, District-Vaishali. Division- Purnea.
 6. Shekh Hasim, S/o Shekh Sadiq Resident of At Vill.- Sonbarsa Kachahari, P.O.-Kharagpur, P.S.- Sonbarsa Kachahari, District-Saharsa, Division-Purnea.
 7. Shambhu Nath Keshari, S/o Mahanth Keshari Resident of Vill.- Jhiktiya,



- P.O.- Balia, P.S.- Basnahi, District- Saharsa, Division- Purnea.
8. Keshari Sharan, (Retired), S/o Late Rajeshwar Prasad Resident of at Vill.- Priya Nagar, P.O.- Sugma, P.S.-Salkhua, District- Saharsa, Division- Purnea.
 9. Amrendra Mishra (Retired), S/o Late Rajendra Mishra Resident of at Vill.- Kukraun, P.O.- Kukraun, P.S.-Dhamdaha, District- Purnea, Division- Purnea.
 10. Arun Kumar Sinha, S/o Late Khemdari Prasad Resident of At Vill.- Priya Nagar, P.O.- Sugma, P.S.-Salkhua, District- Saharsa, Division- Purnea.
 11. Jagdish Prasad (Retired), S/o Late Ram Swarup Singh Resident of At Vill.- Thaniya, P.O.- Rosera, P.S.-Rosera, District- Samastipur, Division- Purnea.
 12. Rajendra Prasad Singh, S/o Late Hanuman Singh Resident of at Vill.- Bakhtiyarpur, P.O.- Mansi, P.S.-Mansi, District- Khagaira, Division- Purnea.
 13. Ram Prasad Sah, S/o Budhu Sah Resident of at Vill.- Sonpur, P.S.- Rosera, District-Samastipur, Division- Purnea.
 14. Subhash Chandra Mandal (Retired), S/o Late Sukhdeo Mandal Resident of at Vill.- Khaira, P.O.- Khaira, P.S.- Falka, District- Katihar, Division- Purnea.
 15. Vindhyachal Rai, S/o Mulkraj Rai Resident of at Vill.- Makundpur, P.O.- Makundpur, P.S.-Charpokhari, District- Bhojpur (Ara), Division- Purnea.
 16. Madan Mohan Prasad Singh, S/o Late Rudal Prasad Singh Resident of At Vill.- Bathua Burjum, P.O.- Bathua Burjum, P.S.- Musarigharari, District-Samastipur, Division- Purnea.
 17. Ram Dhyan Singh (Retired), S/o Late Chitbahal Singh Resident of at Vill.- Bara, P.O.- Bara, P.S.- Kurtha, District- Arwal, Division- Purnea.
 18. Bhim Lal Yadav (Retired), S/o Late Sonai Yadav Resident of At Vill.- Chunapur, P.O.- Chunapur Hawaii Adda, P.S.- K. Nagar, District- Purnea, Division-Purnea.
 19. Tribeni Prasad Singh (Retired), S/o Late Ruplal Singh Resident of At Vill.- Gokul Krishna Ashram Road, P.O.-Purnea, P.S.- Purnea, District- Purnea, Division-Purnea.
 20. Bachneshwar Prasad Singh, S/o Late Rameshwar Prasad Singh Resident of at Vill.- Bangraha, P.O.- Baray Banraha, P.S.- Khagaria, District- Khagaria, Division- Purnea.
 21. Mritunjay Chaudhary, S/o Late Bharat Chaudhary Resident of at Vill.- Jhandapur, P.O.- Jhandapur, P.S.-Bihpur, District- Bhagalpur, Division- Purnea.
 22. Ram Bilash Rai, S/o Late Deo Narayan Rai Resident of at Vill.- Simaria, P.S.- Barauni, District-Begusarai, Division- Bankipur, Patna.
 23. Neel Mani Jha, S/o Late Madhusudan Jha Resident of at Vill.- Dayanatpur, P.O.- Patenia, P.S.-Bibhutipur, District- Samastipur, Division- Bankipur, Patna.
 24. Shashi Bhushan Prasad Singh, S/o Late Mahendra Prasad Singh Resident of at Vill.- Matihani, P.O.- Meghaul, P.S.-Khodabandpur, District- Begusarai, Division- Bankipur, Patna.

... .. Petitioner/s



Versus

1. The State of Bihar through the Secretary of Transport Ministry, Government of Bihar, Patna, Bihar.
2. The Administrator, Bihar State Transport Corporation, Parivahan Bhawan, Veerchand Patel Marg, Patna, Bihar.
3. The Chief Operation Officer, Bihar State Transport Corporation, Parivahan Bhawan, Veerchand Patel Marg, Patna, Bihar.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 97 of 2021)

For the Appellant/s : Mr. Prabhat Kumar Verma, Sr. Adv.
Mr.Jainendra Kumar Sinha, Adv.

For the Respondent/s : Mr.Nakul Kumar Jamuar, Adv.

(In Civil Writ Jurisdiction Case No. 20280 of 2011)

For the Petitioner/s : Mr.Nakul Kumar Jamuar, Adv.

For Respondent No. 2 & 3: Mr. Prabhat Kumar Verma, Sr. Adv.
Mr.Jainendra Kumar Sinha, Adv.

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

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 04-04-2024

The present LPA is presented by the Administrator, Bihar State Road Transport Corporation (for short "Corporation") in assailing the order of the learned Single Judge dated 26.02.2020 passed in CWJC No. 19803 of 2011.

2. There is a delay of about 271 days. I.A. No. 01 of 2021 for condonation of delay in filing LPA No. 97 of 2021 is filed. Reading of para-2 to 5 sufficient cause has not been shown with reference to relevant dates and events. It is



necessary to reproduce para-2 to 5 and it reads as under:-

2. That after passing of the order, the authorities took steps for obtaining certified copy of the order and thereafter Holi holidays came and from 23.03.2020, a heavy lockdown was imposed in whole country due to spread of pandemic disease- Corona Virus and work remained disrupted till July 2020. Physical Court remained disrupted as well, however a Legal Opinion was sought and obtained from Learned Standing Counsel, B.S.R.T.C on 09.07.2020 who gave opinion to prefer an appeal against the order passed in C.W.J.C No. 19803 of 2011 on dt. 26.02.2020.

3. That, thereafter file was sent to higher authorities for concurrence in the matter and after obtaining concurrence for preferring an appeal the file was endorsed to one of panel lawyers of the corporation. The file was sent to the said advocate in his official residence for drafting memo of Appeal, Limitation and stay Petition.

4. That, thereafter the Counsel drafted the Memo of appeal and other petitions. The same was sent for approval before competent authority. After getting approval the present appeal is being filed.

5. That, the delay which has been caused in present matter is neither



intentional nor deliberate and the same took place inadvertently due to resources of outbreak of spread of pandemic and also disruption of normal functioning of the office.

3. Accordingly, the appellants have not made out a case to condone the delay of 271 days in filing LPA No. 97 of 2021. Consequently I.A. for condonation of delay stands rejected.

4. Learned counsel for the appellant argued on main matter as well. It is submitted that grievance of the contesting respondents are that they are entitled to 2nd time bound advancement in the year 1997 and 1998 on various dates. Claim of the respondents was not redressed by the appellant-Corporation resulted in filing CWJC No. 19803 of 2011.

5. Learned counsel for the appellants submitted that there is a delay and laches on the part of the respondents insofar as invoking writ jurisdiction in the year 2011 with reference to cause of action in the year 1997 and 1998. Further it is submitted that in identical matter in the case of Md. Khalil Ahamad, this court refused to grant relief in CWJC No. 20301 of 2011 decided on 23.05.2017. He is also relying on order dated 19.08.2014 passed in MJC No. 4323 of 2012. It is further submitted that scheme of time bound advancement was in



existence till 01.01.1996 whereas the respondents claim is in the year 1997 and 1998. Therefore, they are not entitled to claim 2nd time bound advancement.

6. Whereas in CWJC No. 19803 of 2011 one and only contention raised by the Appellants-Corporation is financial constraint in redressing the grievance of the respondents (petitioners). It is necessary to reproduce order of the learned Single Judge. Para 2 and 3 reads as under:-

2. This writ application was filed in 2011. When the matter was taken up by this Court on 26.11.2018, it was noticed that there was no counter affidavit filed on behalf of the Transport Corporation. This is to be noted that earlier time was allowed on 15.11.2011 for the Corporation to file counter affidavit and at least four adjournments on 20.12.2011, 06.05.2016, 23.05.2017 and finally on 26.11.2018 were granted on request made on behalf of the Corporation for filing counter affidavit.

3. A counter affidavit has now been filed on behalf of the Corporation. There is no denial of any averments made in the writ application. It is, however, stated that the Corporation was facing acute financial crisis and, therefore, the Corporation could not manage funds to pay to the petitioners the benefits of second time bound promotion. It has been specifically stated in paragraph 4 of the counter affidavit that on 20.10.2012 a decision has been taken



by the Corporation not to allow any promotion, in view of the acute financial crisis, which the Corporation is facing. It is, however, admitted that the petitioners are entitled for second time bound promotion. The petitioners appear to have retired as Drivers under the Corporation. They themselves must be in need of money after their superannuation, which they are legally entitled to. The Corporation, which is State within the meaning of Article 12 of the Constitution of India cannot deny legitimate dues of the petitioners.

7. Faced with these contentions it is to be noted that no doubt, there is a delay on the part of the contesting respondents in invoking writ jurisdiction in the year 2011 with reference to claim in the year 1997 and 1998. It is to be noted that their claim is relating to time bound advancement and 3rd party right is not affected. Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Ors.** reported in **1995 SCC (5) 628** has held that if the 3rd party right is not affected in such an event relief cannot be refused in respect of pay fixation is concerned. In the present case, matter is relating to time bound advancement and no 3rd party right would be affected. At the best, certain financial benefits like arrears could be restricted to three years prior to filing of CWJC No. 19803 of 2011. In other words, respondents are not entitled to financial benefits from the



year 1997-1998 till 2008. In other words, from the year 2008 onwards they are entitled to have monetary benefit in respect of extending time bound advancement.

8. Relying on Md. Khalil Ahamad cited (supra), it is order of the learned Single Judge. That apart the core issue involved in the present lis is that for want of sufficient fund respondents' grievance has not been redressed. On the other hand, for the first time the contentions are urged to the extent that there is a delay and laches on the part of the respondents and time bound advancement is not applicable to employees of the appellant-Corporation. These are all after thought contentions that too in LPA. In fact perusal of the observation made by the learned Single Judge in order dated 26.02.2020 passed in CWJC No. 19803 of 2011, it is evident that there is a lack of cooperation in the litigation on behalf of the Appellants-Corporation.

9. Appellants-Corporation are relying on some earlier decision and it is in relation to promotion. Whereas the present case is in respect of TBA. The Hon'ble Supreme Court recently distinguished between promotion and TBA/ACP in the case of **Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.** reported in **2023(2) PLJR (SC) 423**. That apart they are



urging new plea in LPA and they are not maintainable.

10. Taking note of these facts and circumstances, the appellants are not made out a case so as to interfere with the order of the learned Single Judge dated 26.02.2020 passed in CWJC No. 19803 of 2011. Accordingly, the present LPA stands dismissed on main matter also.

Re:- CWJC No. 20280 of 2011

The present CWJC is allowed in terms of order passed in CWJC No. 19803 of 2011 dated 26.02.2020 read with the todays order in LPA No. 97 of 2021.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.04.2024
Transmission Date	N.A.

