

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1791 of 2018

In
Civil Writ Jurisdiction Case No.9443 of 2017

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1. The State Of Bihar
 2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya null null
 3. The Engineer-in-Chief-cum Special Secretary, Public Health Engineering Department, Government of Bi
 4. The Chief Engineer, Public Healh Engineering Department, Government of Bihar, Patna.
 5. The Superintending Engineer, Public Health Engineering Circle, Motihari.
 6. The Executive Engineer, Public Health Division, Dhaka, District- East Champaran.
 7. The Assistant Engineer, Public Health Sub-Division, Pakaridayal District-East Champaran at Motihar

... .. Appellants

Versus

Surendra Singh S/o- Sri Kaplideo singh, R/o- village-Chapra Bihari Tola, Bhusaulwa, P.S- Pakari DAYal, District- East champaran at Motihari, presently Working as tube Well Khalasi/key Man-Cum-Chaukidar, Public Health Division, Dhaka, District-East Champaran at MOTIHARI

... .. Respondent

with

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

1. The State Of Bihar
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya
3. The Engineer- in-chief-cum- Special Secretary, Public Health Engineering Department, Government of
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 Motiha

... .. Appellants



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

with

Letters Patent Appeal No. 405 of 2019
In
Civil Writ Jurisdiction Case No.9720 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, Motihari.
6. The Executive Engineer, Public Health Division, Dhaka, District-East Champaran.
7. The Assistant Engineer, Public Health Sub-division, Dhaka, District-East Champaran at Motihari.

... .. Appellants

Versus

Doleshwar Prasad Son of Sri Ramchandra Prasad Resident of Village-Madhubani Ghat, P.S.-Motihari Muffasil, District-East Champaran at Motihari, presently working as Tube Well Khalasi/Keyman-cum-Chaukidar, Public Health Sub-Division, Dhaka, District-East Champaran at Motihari.

... .. Respondent

with

CIVIL REVIEW No. 259 of 2023
In
Letters Patent Appeal No.185 of 2018

Birendra Kunwar Son of Sri Chandra Deo Kunwar Resident of Village-Mahishi, P.S.- Bibhutipur, District- Samastipur, Retired from the Post of Plumbing Khalasi, Gramin Water Supply Scheme, Bibhutipur, District-Samastipur, under Public Health Engineering Division, Samastipur

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Public Health Engineering Department, Government of Bihar, Patna.



2. The Commissioner and Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Chief Engineer (Mechanical), Public Health Engineering Department, Government of 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.
9. Nagendra Singh, Son of not known to the petitioner, through the Executive Engineer, Public Health Engineering Division, Samastipur, District- Samastipur.
10. Gajendra Nath Upadhyay, Son of not known to the petitioner through the Executive Engineer, Public Health Engineering Division, Samastipur, District- Samastipur.
11. Vijay Kumar Shahi, Son of not known to the petitioner through the Executive Engineer, Public Health Engineering Division, Samastipur, District- Samastipur.
12. Motiur Rahman, Son of not known to the petitioner through the Executive Engineer, Public Health Engineering Division, Samastipur, District- Samastipur.
13. Vinay Pratap Chaudhary, Son of not known to the petitioner through the Executive Engineer, Public Health Engineering Division, Samastipur, District- Samastipur.

... .. Opposite Parties

Appearance :

(In Letters Patent Appeal No. 1791 of 2018)

For the Appellant/s : Mr. Vishwambhar Prasad, AC to AAG 5

For the Respondent/s : Mr. Vijay Kumar Singh, 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. Vijay Kumar Singh

(In Letters Patent Appeal No. 405 of 2019)

For the Appellant/s : Mr. Vishwambhar Prasad (Ac to AAG 5)

For the Respondent/s : Mr. S.Raza Ahmad, AAG 5

(In CIVIL REVIEW No. 259 of 2023)

For the Petitioner/s : Mr. Gyanand Roy, Advocate

For the Opposite Party/s : Mr. S. Raza Ahmad (AAG 5)



**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER**

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

10 15-02-2024 **Re.:- Civil Review No. 259 of 2023 arising out of
LPA No. 185 of 2018**

The present Civil Review is filed for recalling the order dated 20.04.2023 passed in LPA No. 185 of 2018.

2. Feeling aggrieved by the order dated 20.04.2023, petitioner preferred Special Leave Petition (Civil) Dairy No.(s) 21623 of 2023, which was disposed on 31.07.2023 in the following manner:

“1. Learned Senior Counsel for the petitioner states that liberty may be granted to withdraw the present petition, while reserving the right of the petitioner to seek appropriate remedy before the High Court.

2. Without making any observation on the application proposed to be filed by the petitioner before the High Court, the present petition is dismissed as withdrawn along with the pending applications, if any, while granting liberty, as prayed for.”

3. *Prima facie*, the Hon’ble Supreme Court has not made any observation on merit, therefore, what is required to be decided in the present Civil Review is whether any error apparent on the face of the record in respect of order dated



20.04.2023 passed in the LPA No. 185 of 2018 has been made out or not?

4. Today, learned counsel for the review-petitioner submitted that pursuant to earlier order passed in CWJC No. 7359 of 2002 and connected matters, decided on 13.07.2006, petitioner's service condition is required to be regulated on par with his immediate juniors with reference seniority list state to have been prepared for the purpose of regularization read with the constitution of Committee. These are all new grounds urged in the review petition. Re-arguing the LPA No. 185 of 2018 on merits. In our order dated 20.04.2023, we have made it clear that the petitioner, whose services have been regularized w.e.f. 19.06.2014 has not questioned prospective regularization and further sought for his date of regularization relates back to 14.07.2006, the date on which his immediate juniors were stated to have been regularized. Further issue is relating to payment of salary from 14.07.2006 to 19.06.2014. Unless and until his services were regularized w.e.f. 14.07.2006, he is not entitled to salary attached with the post and the same has been decided.

5. Recently, Hon'ble Supreme Court in the case of ***Sanjay Kumar Agarwal v. State Tax Officer (1) & Anr.*** reported in ***2023 SCC Online SC 1406*** examined under what



circumstances Civil Review petition could be entertained. The following eight guidelines have been issued.

16. The gist of the afore-stated decisions is that:—

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reargue the questions which have already been addressed and decided.

(vii) An error on the face of record



must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

6. Having regard to the fact that the new grounds are urged in the Civil Review petition and the same cannot be adjudicated in the Review Petition, moreover, service condition of the Civil Review petitioner has been settled in respect of regularization while fixing the date of regularization as 19.06.2014, with a prospective effect, unless and until it is set aside by competent forum, petitioner is not entitled to alter his date of regularization w.e.f. 19.06.2014 to that of 14.07.2006, therefore, Review Petition is dismissed.

Re.: L.P.A. No. 1791 of 2018 & L.P.A. No. 405 of 2019

7. *Prima-facie*, the present appeal is not maintainable in view of later development from the date of the learned Single Judge's order dated 28.08.2018 to the extent that respondents have granted relief of regularization with retrospective effect including arrears of pay. However, arrears of pay is yet to be settled by Joint Secretary, who is author of order dated



18.11.2022 *vide* Annexure-R/2 is hereby directed to file his affidavit, as to how the present LPA is maintainable. Such affidavit be filed before the next date of hearing.

8. Re-list these matters on 07.03.2024.

Re.: L.P.A. No. 1792 of 2018

9. At the request of the learned counsel for the appellants, re-list this matter on 07.03.2024.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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