

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.686 of 2022

In
Civil Writ Jurisdiction Case No.4063 of 2018

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1. Prashant Kumar Son of Sri Muni Lal Bind, Resident of Village- Bara, P.O. and P.S.- Kinjar, Town and District- Arwal, presently posted as Assistant Electric Engineer, Electirc Sub Division, Danapur, Arya Samaj Mandir Road, P.O.- Danapur, P.S.- Danapur, Town and District- Patna.
 2. Surendra Chaudhary Son of Sri Nathun Chaudhary, Resident of Shankarpur, Police Station- Haspura, District- Aurangabad.
 3. Wakil Singh Son of Dharikshan Singh, Resident of Village- Harigaon, Police Station- Jagdishpur, District- Bhojpur at Arah.
 4. Alok Kumar Son of Jaglal Prasad Choudhary, Resident of Village- Basantpur Patti, Police Station- Saraiya, District- Muzaffarpur.
 5. Sandeep Kumar Son of Dwarika Prasad, Resident of Mohalla- Dhobi Tola, Police Station- Danapur, District- Patna.
 6. Ajay Kumar Son of Ravindra Nath Gupta, Resident of Village- Chhajan Khariyar, Police Station- Kurrahni, District- Muzaffarpur.
 7. Md. Rizwan Ahmad Son of Md. Nizamuddin Ansari, Resident of Village- Kathara, Police Station- Sakatpur, District- Darbhanga.
 8. Vishal Kumar Son of Dhupal Pandit, Resident of Village- Prasadi English, Police Station- Arwal, District- Arwal.
 9. Wazim Raza Son of Md. Abbas, Resident of Deurwa, Police Station- Lauriya, District- West Champaran.
 10. Md. Nurul Hoda Son of Md. Ismail, Resident of Mohalla- 3rd Sector, New Millat Colony, Police Station- Phulwarisharif, District- Patna.
 11. Priti Kumari Daughter of Sri Y.N. Mahto, Resident of Village- Deshri, Police Station- Bibhutipur, District- Samastipur.
 12. Lallu Prasad Son of Bhairaw Prasad Prasad Baitha, Resident of Village- Kasba Mehshi, Police Station- Mehshi, District- East Champaran.

... .. Appellant/s

Versus

1. The Chairman Cum Managing Director Bihar State Power (Holding) Company, Ltd, Patna, Vidyut Bhawan, Bailey Road, Patna.
2. Director (Administration) Bihar State Power (Holding) Company, Patna, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager (HR/Admin) Bihar State Power (Holding) Company, Ltd, Patna, Vidyut Bhawan, Bailey Road, Patna.
4. Brajesh Kumar, Son of Late Lal Bahadur Ram Resident of Village Gaura, P.S.- Mohania, Distt.- Kaimur.
5. Rohit Kumar, Son of Sukhlal Chaudhary Resident of Dr. Ranjan Yadav Path, P.S.- Danapur, Distt.- Patna.



6. Mritunjay Kumar, Son of Deogirish Prasad Resident of Bodh Gaya, P.S.- Bodh Gaya, Distt.- Gaya.
7. Siyaram Kumar, Son of Bishnudeo Pandit Resident of Vill.- Bhawanipur Nayatola, P.S.- Rangra Chowk, Distt.- Bhagalpur.
8. Priya Darshan Keshav, Son of Late Ram Janam Prasad Resident of Raghu Kunjam, Road No. 3, Ashok Nagar, P.S.- Kankarbagh, Distt.- Patna.
9. Devendra Ram, Son of Late Dhongal Ram Resident of Village- Balauha, P.S.- Kalyanpur, District- Samastipur.
10. Shyamal Kishor, Son of Dukhmochan Mandal Resident of Village- Bhan, P.S.- Madhepura, Distt.- Madhepura.
11. Gyan Prakash, Son of Late Brahmdeo Mahto Resident of Village Phulmalik, P.S.- Sahebpur Kamal, Distt.- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhinav Shrivastava, Advocate Mr. Ajay Kumar Prasad, Advocate Mr. Binod Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate Mr. Ashok Kumar Karn, Advocate Mr. Akshansh Shankar, Advocate Mr. Shanker Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2024

The writ petitioners are in appeal challenging the judgment of the learned Single Judge declining their prayer for seniority.

2. On facts, it is to be noticed that the appellants had applied under an advertisement issued in the year 2006 for appointment on contractual basis against sanctioned posts in the erstwhile Bihar State Electricity Board, now taken over by the Bihar State Power (Holding) Company Limited, Patna (referred



to for brevity as 'the Board' also for convenience).

3. The appellants were appointed as Assistant Electrical Engineer (General), based on the marks acquired in the qualifying examination, as contractual employees by an order dated 10.04.2007. After the said engagement of the appellants, the Board had made several regular recruitments against the post of Assistant Electrical Engineer (General). Pausing here, it is to be noticed that the regulations of the Board provided for appointment, both as contractual employees and regular employees, for which there were different sanctioned posts with different procedure for recruitment. The appellants are also persons who appeared under the regular selection, but failed to qualify. When the appellants continued as contractual employees, by decision dated 03.03.2015, the Board of Directors of the Company decided to take the appellants into the regular establishment and an Office order was issued on 31.03.2015; specifically providing that the seniority of the contractual employees on regularisation in regular pay scales would be fixed below the regular appointees, who were appointed before the date of regularisation. The *inter se* seniority of the contractual employees would depend upon their year of engagement. The appellants, who were the writ



petitioners, claimed that they are entitled to recognition of their services in the contractual establishment and be placed above the regularly recruited employees.

4. The learned Single Judge looked at every contention raised by the writ petitioners. The learned Single Judge noticed the contention raised based on Regulations 82 and 84 of the Bihar State Electricity Board Service Regulations, 1976 (for brevity 'Regulation') and the argument that since there is 'continuous officiation' provided in contractual employment, the order of regularisation is opposed to public policy. The reliance placed on *Bihar State Electricity Employees Association & Ors. v. Bihar State Power (Holding) Company Limited & Ors.*, an unreported decision of a Division Bench of this Court in CWJC No. 13542 of 2019 was distinguished but it stands reversed in LPA 1554 of 2019. *Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma & Ors.*, AIR 1998 SC 2909 and *The Direct Recruit Class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors.*, AIR 1990 SC 1607, was noticed. The learned Single Judge found that contractual employment and regular employment, in the Board, were two distinct streams of recruitment. The writ petitioners had no claim for regularisation



and the decision for such regularisation, could only be on the seniority as decided at the time of regularisation; which the contractual employees accepted without demur and challenged it after three years. It was also found that the writ petitioners were given a fair opportunity to become members of the regular establishment, by participating in the selection, which they either failed to avail or failed to qualify on participation. The decisions relied on were distinguished. The two distinct streams of appointment as regular employees and contractual employees were emphasised to reject the writ petition.

5. Before us, learned Counsel Shri Abhinav Shrivastava argued that the appellants and the regular employees were discharging the same duties. The contractual employees were appointed long before and they had a legitimate claim of seniority and the seniority determined created a heartburn insofar as its fixation below those persons who were appointed after the persons who were regularly recruited, much later to the contractual employees. To a definite query from us, as to why none of the regular employees, whose seniority was placed above the contractual employees, were impleaded, the learned Counsel had absolutely no answer. Considering the said defect, which puts to peril the very maintainability of the writ



petition, the learned Counsel only prays for liberty to agitate the cause afresh.

6. The learned Counsel for the Board, Shri Anand Kumr Ojha asserted that there is nothing to be interfered with, in the impugned judgment. It is also argued that the *inter se* seniority, has been fixed in the year 2015 and there is no question of any liberty being offered to the appellants to now challenge the same. The writ petition itself was belated having been filed after three years and now it is almost eight years and there is no question of unsettling, settled seniority.

7. We have given anxious consideration to the arguments addressed on both sides. The contractual employment was only in the exigency of service and as permitted by the regulations. There was also an affidavit sworn to by the appellants wherein they had merely sought for the seniority and undertaken not to claim any other facility given to the regular appointees. The order of regularisation issued on 31.03.2015 was specific insofar as the seniority of the contractually engaged employees; on being regularised in regular pay scales, being fixed below the employees appointed in the regular pay scale. The appellants were also given opportunity to participate in the two recruitment processes to the regular posts, undertaken by



the Board, which they were unable to avail, either for non-participation or for not qualifying.

8. There were two distinct streams of employment, as per the Regulations of the Board, wherein Regulation 2(xviii) defines employee, as a person appointed to any post in the Board or any of the establishments under it, whether borne on regular or work-charged establishments, excluding casual or muster roll workers and staff appointed on daily-wage basis. Contract staff were defined under Regulation 2(xiv), which includes persons employed on the basis of a contract, fixing their terms of employment, salary, compensation or honorarium and allowances. While the contract staff were appointed only on the basis of the marks obtained in the essential academic qualification; under the General Establishment, there was an open competition in the selection carried out to regular posts in the establishment; where *inter se* merit between the competing candidates was considered and appointments made based on the merit list drawn up. The appellants' appointment hence were not under the regular establishment as employees of the Board and it was not to the sanctioned posts of regular employees within the Board as defined under the Regulations.

9. Regulations 82 and 84 relied upon by the appellants



deal with determination of seniority of ex-cadre employees on the principle of 'continuous officiation' in the grade equal to the grade of the merged post. The appellants had never served in any ex-cadre post, nor were they employees of private electric supply undertakings, who were absorbed into the Board. The appellants do not fall under Regulations 82 or 84. The regularisation and the decision on seniority was also not opposed to Section 23 of the Indian Contract Act, since the contract did not provide for such regularisation. The contract employees at the time of appointment, had undertaken by a sworn affidavit that there would be no claim for any facility admissible to a Government employee and on the basis of the contract employment, no regular appointment or employment could be claimed. By the nature and status they acquired by virtue of the contractual appointment, there is no question of Section 23 being attracted.

10. In the above circumstances, the regularisation granted to the appellants were only a benefit conferred by the Board, which can be availed of only under the specific terms of a decision; which also includes the determination of seniority. There is no right for regularisation, which accrues to the contract employees and in that circumstance, there can be no



consideration of the contractual employment either for regularisation or for determination of seniority reckoning the period spent on contractual employment; when a regularisation is granted as a benefit and not as a right that flows from the initial appointment.

11. The decision in ***Bihar State Electricity Employees Association*** (supra) was distinguished by the learned Single Judge on the finding that it related only to the grant of ACP and MACP; wherein there are no competing third party rights; by way of claim of determination of *inter se* seniority with persons working in the regular establishment. The said decision was also reversed in LPA No. 1554 of 2019, titled as ***The Bihar State Power (Holding) Company Limited vs. Bihar State Electricity Employees Association***(dated 31.01.2024). A co-ordinate Bench held so in para-23:

“23. Contractual employees whose services are regularized on the basis of past temporary service, shall not be entitled to any other benefits from the original date of his joining on contractual basis or from any other retrospective date as is evident from the conditions stipulated in the order of regularization dated 31.05.2015. As long as those conditions are not questioned before competent forum and such conditions are set aside in such an event only the respondents are entitled to have certain benefits with reference to past contractual



service. As on this day whatever the terms and conditions stipulated in the order of regularization dated 31.03.2015 are intact, therefore, the learned Single Judge has committed error in allowing the writ petition.”

12. ***Secretary-cum-Chief Engineer, Chandigarh*** (supra) was distinguished finding that therein the employee who approached the High Court, was the only diploma-holder available for promotion, who was merely placed on the higher post by way of stop-gap arrangement; when he was entitled to be considered for promotion. It was in that context that the Hon’ble Supreme Court found that the employee could not be denied the benefit pertaining to the higher post merely on an undertaking that he would not claim any benefit, which would run counter to the public policy under Section 23 of the Indian Contract Act.

13. ***The Direct Recruit Class-II Engineering Officers’ Association*** (supra) was distinguished on the fiinding that therein the declaration was insofar as ‘continuous officiation’ by Government servant in a post having been appointed according to rules. It was also noticed that there was a caveat by the Hon’ble Supreme Court itself that the corollary of the above rule is that if the initial appointment is only *ad hoc*



and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. *Ad hoc*, temporary and contractual though not always identical words in service jurisprudence; in contrast with 'regular', they have the same connotation and the latter stands as a distinct status; the benefits of which are only available to those having such regular nature of employment.

14. As we noticed hereinabove, there is a distinction insofar as the regular employment and contractual employment; the post and the process of recruitment also being different and distinct.

15. We agree with the learned Single Judge that the contentions raised or the decisions relied upon by the appellants would be of no avail to determine the seniority, *inter se*; between contractual employees and the regular employees.

16. We also notice that the writ petition was filed after three years of the order granting regularisation. Having accepted the regularisation without demur, which regularisation was on condition of determination of seniority as delineated in the said order itself, the contractual employees cannot take a turn around and challenge one part of the decision while accepting the other part. Further, as we notice, none of the regular employees have



been impleaded even in a representative capacity. The request of the learned Counsel for the appellants, to leave the question open, cannot also be entertained. At this juncture, when eight years have elapsed from regularisation and consequential determination of seniority, we would not unsettle, settled position of seniority; which claim of reckoning of period of contractual employment, we have already found to be unsustainable even otherwise.

17. We reject the appeal, leaving the parties to suffer their respective costs.

18. Interlocutory application(s), if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	30.07.2024
Transmission Date	

