

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1292 of 2017

In

Civil Writ Jurisdiction Case No.15460 of 2015

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Surendra Narayan Jha “Suman”, son of Late Harideo Jha, Resident of Quarter No. F 4/1, M.T.P.S. Colony, Kanti, P.S. Kanti, District- Muzaffarpur.

... .. Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Energy Department, Government of Bihar, Patna.
2. The Additional Secretary, Energy Department, Government of Bihar, Patna.
3. The Bihar State Power Holding Company Ltd. (previously known as Bihar State Electricity Board), Patna through the Chairman-cum-Managing Director.
4. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Patna.
5. The Secretary, Bihar State Power Holding Company Ltd., Patna.
6. The Bihar State North Power Holding Company Ltd., Muzaffarpur through the Managing Director.
7. The General Manager-cum-Chief Engineer, the Bihar State Power Transmission Company Ltd., Transmission Zone-II, Muzaffarpur.
8. The Electrical Executive Engineer, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
9. The Director Accounts, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
10. The Chief Executive Officer, Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
11. The Additional General Manager (HR), Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.

... .. Respondents.

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with

Letters Patent Appeal No. 1293 of 2017

In

Civil Writ Jurisdiction Case No.14896 of 2015

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Krishna Kumar, Son of Late Markandey Nath, Resident of Mohalla - Pirmohani, Opposite Hotel Jaipur, P.S. Kadam Kuan, District - Patna, presently residing at Flat No. 201, Anand Sri Apartment, Road No.1, Ravi Chowk, Patel Nagar, P.S. Shastri Nagar, District – Patna.

... .. Appellant.



Versus

1. The State of Bihar through the Principal Secretary, Energy Department, Government of Bihar, Patna.
2. The Additional Secretary, Energy Department, Government of Bihar, Patna.
3. The Bihar State Power Holding Company Ltd. (previously known as Bihar State Electricity Board), Patna through the Chairman-cum-Managing Director.
4. The Chairman - Cum- Managing Director, Bihar State Power Holding Company Ltd., Patna.
5. The Secretary, Bihar State Power Holding Company Ltd., Patna.
6. The Bihar State North Power Holding Company Ltd., Muzaffarpur through the Managing Director.
7. The General Manager - Cum - Chief Engineer, the Bihar State Power Transmission Company Ltd, Transmission Zone-II, Muzaffarpur.
8. The Electrical Executive Engineer, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
9. The Director Accounts, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
10. The Chief Executive Officer, Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
11. The Additional General Manager (HR), Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.

... .. Respondents.

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with

Letters Patent Appeal No. 1294 of 2017

In

Civil Writ Jurisdiction Case No.14975 of 2015

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Jai Mangal Singh, Son of Late Ram Barai Singh, Resident of Village- Adarsh Gram- 1, Kolhua Paigambarpur, P.S. Kanti, District- Muzaffarpur.

... .. Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Energy Department, Government of Bihar, Patna.
2. The Additional Secretary, Energy Department, Government of Bihar, Patna.
3. The Bihar State Power Holding Company Ltd. (previously known as Bihar State Electricity Board), Patna through the Chairman-cum-Managing Director.
4. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Patna.
5. The Secretary, Bihar State Power Holding Company Ltd., Patna.



6. The Bihar State North Power Holding Company Ltd., Muzaffarpur through the Managing Director.
7. The General Manager - Cum - Chief Engineer, the Bihar State Power Transmission Company Ltd, Transmission Zone-II, Muzaffarpur.
8. The Electrical Executive Engineer, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
9. The Director Accounts, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
10. The Chief Executive Officer, Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.
11. The Additional General Manager (HR), Kanti Power Generating Company Ltd. (previously known as Vaishali Power Generating Company Ltd.), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.

... .. Respondents.

Appearance :

(In Letters Patent Appeal No. 1292 of 2017)

For the Appellant : Mr. Vijay Kumar Singh, Advocate.
For the State : Mr. Yogendra Prasad Sinha, AAG-7.
For the Respondent Nos.3 to 7 : Mr. Umesh Prasad Singh, Senior Advocate.
Mr. Ajay Kumar Gautam, Advocate.
Mr. Vaibhav Ven Shankar, Advocate.

For the Respondent Nos.10 and 11: Mr. Tuhin Shankar, Advocate.

(In Letters Patent Appeal No. 1293 of 2017)

For the Appellant : Mr. Vijay Kumar Singh, Advocate.
For the State : Mr. Yogendra Prasad Sinha, AAG-7.
For Respondent Nos.3 to 7 : Mr. Umesh Prasad Singh, Senior Advocate.
Mr. Ajay Kumar Gautam, Advocate.
Mr. Vaibhav Ven Shankar, Advocate.

For the Respondent Nos.10 and 11: Mr. Tuhin Shankar, Advocate.

(In Letters Patent Appeal No. 1294 of 2017)

For the Appellant : Mr. Vijay Kumar Singh, Advocate.
For the State : Mr. Yogendra Prasad Sinha, AAG-7.
For Respondent Nos.3 to 7 : Mr. Umesh Prasad Singh, Senior Advocate.
Mr. Ajay Kumar Gautam, Advocate.
Mr. Vaibhav Ven Shankar, Advocate.

For the Respondent Nos.10 to 11 : Mr. Tuhin Shankar, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

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

Date : 28-01-2025

Matters were heard from time to time. Various orders
have been passed. Later order is dated 14.11.2024 and it reads



as under:

“Respondent Nos.10 and 11 are hereby directed to file their personal affidavit as to why the appellants are not entitled to pension during the period from the year 2007 to 2014 for which period appellants were serving the office of the respondent Nos.10 and 11.

2. Respondent Nos.10 and 11 are hereby directed to take note of Clause 5(e) of the Notification dated 08.09.2006, it relates to Bihar State Electricity Reforms (Transfer of Muzaffarpur Thermal Power Station) Scheme, 2006 in the absence of framing of any Regulation relating to service conditions in the office of Respondent No.10.

3. Relist this matter on 12.12.2024.”

2. Thereafter, at the instance of Respondent Nos.10 and 11 matters were adjourned on four occasions. Respondent Nos.10 and 11 have filed supplementary to the affidavit dated 11.12.2024 along with Annexures-R/4 to R/8.

3. Perusal of documents-Annexures-R/4 to R/8, there is no iota of material that they have framed Rules of their own while overcoming Clause 5(e) of the Notification dated 08.09.2006. Clause 5(e) of the Notification dated 08.09.2006 reads as under:



“The Transferee may frame regulations governing the conditions of service of Specified Personnel transferred to the Transferee.

Provided that such conditions shall not in any way be less favourable or inferior to those applicable to them immediately before the Date of the Transfer and till such time new regulations are framed, the existing service conditions of the Transferor shall mutatis mutandis apply.”

4. On the other hand, what has been placed on record along with the supplementary to the affidavit dated 11.12.2024 filed on 21.01.2025 relating to pay and benefits structures of 9 specified personnel who have joined KBUNL from BSEB and it was internal note sheet dated 23.10.2013 followed by Resolution dated 29.11.2013. These two documents are not in compliance to Clause 5(e) of the Notification dated 08.09.2006. In other words, even to this day, they have not complied alternative service conditions in the light of Clause 5(e) of the Notification dated 08.09.2006. On the other hand, Respondent nos.10 and 11 have taken certain undertaking from the appellants. Those undertakings are contrary to the statutory Notification dated 08.09.2006, in particularly, Clause 5(e). By



merely taking certain undertakings from the appellants, that does not take away their right vested under Clause 5(e) of the Notification dated 08.09.2006. Respondent nos.10 and 11 have only two options in terms of Clause 5(e) of the Notification dated 08.09.2006 to the extent that they have to frame their own statutory Rules governing their employees like appellants or in the alternative to adhere to Clause 5(e) of the Notification dated 08.09.2006. Such undertaking by the Respondent nos.10 and 11 may also attract certain provisions of the Contract Act to the extent that such undertaking is contrary to law. According to the Indian Contract Act, 1872, an undertaking is considered void under Section 2(g), which defines a 'void agreement' as an agreement that cannot be enforced by law; essentially meaning any agreement that is not legally binding is considered void. Estoppel principle is not applicable when arbitrariness affects fundamental rights under Articles 14 and 16 of the Constitution. The Hon'ble Supreme Court in the case of **Olga Tellis and Others Versus Bombay Municipal Corporation and Others, (1985) 3 SCC 545**, it is held that no estoppel can be claimed against enforcement of fundamental rights. Similar view has been taken note of in the case of **Krishna Rai (Dead) Through Legal Representatives and Others Vs. Banaras Hindu**



**University Through Registrar and Others, reported in (2022)
8 SCC 713.**

5. Taking note of these material information, respondent nos.10 and 11 are hereby directed to settle the appellants' grievance insofar as considering their services from the year 2007 to 2014 for the purpose of fixation of pension and redress the same after due calculation as on the date of payments are made. Arrears of pension shall be calculated and disbursed to the appellants within a period of three months from the date of receipt of this order, failing which appellants are entitled to interest on belated settlement of pensionary benefits at the rate of 8% per annum.

6. With the above observations, the present L.P.As. stand disposed of while modifying the Judgment of the learned Single Judge dated 19.08.2017 passed in C.W.J.C. No.15460 of 2015 (Surendra Narayan Jha 'Suman' Versus The State of Bihar and others) and other connected matters.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025.
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