

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.397 of 2018

In

Civil Writ Jurisdiction Case No.15074 of 2012

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1. The Bihar State Food And Civil Supplies Corporation Limited Through Its Managing Director.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited Sone Bhawan Veer Chand Patel Path Patna at Present R-Block, Patna.
3. The Chief Administration, Bihar State Food and Civil Supplies Corporation Limited Sone Bhawan Veer Chand Patel Path Patna at Present R-Block, Patna.
4. District Manager Siwan, Bihar State Food and Civil Supplies Corporation.

... ... Appellant/s

Versus

Surendra Prasad Yadav Son of late Raj Ballabh Roy Resident of Village-Maker,Paschim Tola Chakya, P.S. Maker District- Saran, at Present Retired Assistant Manager, District-Siwan.

... ... Respondent/s

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Acts/Sections/Rules:

- Payment Gratuity Act, 1972 - Section 4(5)
- Bihar Service Code
- Bihar Financial Rules
- Government Servant Conduct Rule

LPA - arising out of order in writ - petition, which directed increased gratuity amount to be paid to the employees of the corporation, who retired on 31.03.2010.

Held - Amendment to 1972 Act came into effect after Respondent's retirement. - The corporation's rules did not cover the enhanced gratuity rules of the state. (Para 3)

Hence, Respondent not entitled to the enhanced gratuity. (Para 12)

LPA allowed by court. (Para 13)

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... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr.Shailendra Kumar Singh
For the Respondent/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr.Umesh Kumar Roy, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-10-2023

The Letters Patent Appeal arises from an order in a writ petition, which directed gratuity to be paid at Rs. 10 lakhs to the employees, who retired on 31.03.2010. Learned Senior Advocate, Sri Anjani Kumar, appearing for the appellant Corporation pointed out that the amendment to the Payment of Gratuity Act, 1972,



enhancing the ceiling of the amounts payable as gratuity from Rs. 3,50,000/- to Rs. 10 lakhs was brought in, with effect from 24.05.2010, after the retirement of the writ petitioner. It is pointed out that the employees of the Corporation are not regulated by the same rules as applicable to the Government employees and their service conditions as also retirement benefits differ considerably. It is argued that the benefit of the State government employees can be made applicable to the employees of the respondent corporation, only if the Corporation accepts the same, with approval of the Government. Without acceptance by the Corporation and even if it is accepted, without approval from the Government, such regulations applicable to the State Government employees cannot apply to the employees of the Corporation.

2. Insofar as the discrimination alleged it is pointed out that payments made were on the next day of the enhanced gratuity being made applicable to the Corporation employees; that too without approval from the Government. Reliance was placed on **Jaipur**



Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35, Directorate of Film Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737 and State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 to contend that an illegality cannot be perpetrated by the Courts on the ground of discrimination.

3. Shri Rajendra Narayan, learned Senior Advocate appearing for the 1st respondent-writ petitioner seriously assails the contentions raised by the State and seeks to uphold the judgment of the learned Single Judge. It is conceded that the payment Gratuity Act, 1972, if made applicable would not enable the petitioner to be paid the enhanced amounts of gratuity which were brought in after the retirement of the petitioner. However, it was pointed out that the State has specifically accepted the rules governing the State Government employees as is evident from the various documents produced. Annexure-A makes applicable the Bihar Service Code and the Bihar Financial Code as also the Government Servants Conduct Rules to the employees of the Corporation.



4. Reliance is placed on a Division Bench judgment of this Court in **Lala Nand Kumar v. Bihar State Food, (2008) 1 PLJR 579** to contend that the very same documents were relied upon by the Division Bench to find that the Bihar Service Code was adopted for the employees of the Corporation and that this adoption, would apply *mutatis mutandis* to future changes, if the resolution is read as a whole. In the cited decision, it was directed that the enhancement of age of superannuation from 58 to 60 made applicable to the State Government employees would equally apply to the employees of the Corporation. Annexure-B, C and D are also urged to uphold the order passed.

5. At the outset, it has to be noticed that going by the payment of Gratuity Act, 1972, the enhanced amounts would not be applicable as on the date of retirement of the 1st respondent. However, Section 4(5) of the Gratuity Act, would enable a better benefit to be made applicable to an employee by an employer and in the circumstances of such better benefit being conferred on



the employee, then the employee would also have a claim to seek for that. Whether such a better benefit was conferred on the employee, would be the question arising. It is in this context that the documents relied upon by the petitioner, has to be examined.

6. Annexure-A provided that till such time as the Service and Financial Rules are framed by the Corporation, provisions made in the Bihar Service Code, Bihar Financial Rules, Government Servant Conduct Rule, and Rules concerning travelling allowances and medical allowances applicable to the State Government employees be adopted for the employees of the Corporation. The Division Bench judgment cited was with respect to the enhancement of the age of superannuation. Admittedly, the Rules referred to in Annexure-A do not provide for gratuity, and hence, the very same gratuity payable to the State Government employees would not be applicable to the employees of the Corporation.

7. It is admitted that the Bihar Pension Rules, has not been made applicable to the applicants and even



going by the other documents produced, the gratuity paid is as per the notifications issued by the State Government; which had to be separately applied to the employees of the Corporation, through adoption by the Corporation and approval from the State Government, which cannot be found from Annexure-A. The entitlement to gratuity arise for the State Government Employees from the Bihar Liberalised Pension Scheme, 1950, which is not adopted by the Corporation. We find the cited decision to be not applicable.

8. Now we come to Annexure-B, a translation of which has been provided by the Translation Department of the Patna High Court which is extracted hereunder:-

ANNEXURE-B

**BIHAR STATE FOOD AND CIVIL
SUPPLIES CORPORATION LTD**
Son Bhawan, 5th Floor, Veerchand Patel Path,
Patna

OFFICE ORDER

In view of the decision taken under Item No. 129.6 of the 129 meeting of the Board of Directors of Bihar State Food and Civil Supplies Corporation Limited held on



10.6.2008, the approval of payment of gratuity upto the maximum limit of 3.50 lakhs (Three Lakhs Fifty Thousand rupees) to the employees of the Corporation as per the provisions of Section 4(3) of the Gratuity Act similar to the State Government employees, is given with the condition that the calculation of gratuity amount will be done in accordance with the provisions provided in Section-4 of the Bihar Payment of Gratuity Act, 1972 and the Letter No. 4221, dated 21.09.1999 issued earlier by the Corporation.

Sd/-(Illegible)

03.07.08

Managing Director

Memo No. 5490
03.07.08

Patna, dated-

Copy forwarded to All the Pramukhs and Up-Pramukhs/Confidential Section, Corporation Headquarters, Patna/ All the District Managers, State Food Corporation, Bihar and Jharkhand for information and necessary action.

Sd/-(Illegible)

03.07.08

Managing Director

9. The decision taken as seen from the above extract is to approve the payment of gratuity up to the maximum limit of Rs. 3.50 lakhs to the employees of the Corporation as per the provisions of Section 4(3) of the Gratuity Act similar to the State Government employees



with a condition that the calculation of the gratuity amount will be done in accordance with the provisions of Section 4 of the Bihar Payment of Gratuity Act, 1972 (*sic*- it is the Rules and not the Act). The Payment of Gratuity Act is of the Union Parliament and under Section 15 of the enactment the State has brought out the Bihar Payment of Gratuity Rules, 1972. Under the Rules the determination of the gratuity amounts is as per Section 4 of the Central Legislation; i.e. the maximum limit of the Payment of Gratuity Act, 1972. Neither the Pension Rules, the Liberalised Pension Scheme or the Payment of Gratuity Rules have been adopted or made applicable to the respondent Corporation.

10. We also notice the enhancement of gratuity made by the State of Bihar applicable to its employees by Annexure-C Gazette Notification. It made Rs. 10 lakhs gratuity applicable between 01.04.2007 to 23.09.2009. Annexure-D is an order of the Corporation, which applied the quantum of Rs. 10 lakhs as applicable under the Gratuity Act, 1972, with effect from



23.09.2009. Annexure-D order is dated 14.02.2017, and the writ petitioner has not produced anything to show that this has been approved by the Government. The only contention is based on Annexure-E, where certain persons were paid the aforesaid amounts of gratuity. As rightly pointed out by the learned Senior Counsel appearing for the Corporation these payments were on the very next day of Annexure-D without any approval from the Government.

11. Annexure-D was passed on 14.02.2017, and on the very next day on 15.02.2017, payments were made to certain persons through bank which was an illegal act. The cited decisions examined the scope of Article 14 of the Constitution of India which guarantees equality before law to all citizens. It was declared that this guarantee “of equality before law is a positive concern and it cannot be enforced by a citizen or Court in a negative manner”. If an illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the



High Court or the Hon’ble Supreme Court so that the same irregularity or illegality be committed by the State, on the reasoning that they have been denied the benefit which have been extended to others, although in an irregular or illegal manner.

12. We find absolutely no reason to sustain the ground of discrimination raised. We find the 1st respondent to be not entitled to the enhanced gratuity. The impugned judgment is set aside. It is the common case of both parties that the sole question of enhanced quantum has to be considered in the appeal. We set aside the judgment only to the extent of granting enhanced gratuity of Rs. 10 lakhs.

13. The Letters Patent Appeal stands allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.10.2023.
Transmission Date	

