

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.214 of 2021**

**In**

**Civil Writ Jurisdiction Case No.11567 of 2017**

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1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Commissioner and Secretary, Department of Social Welfare (Previously known as Welfare Department) Government of Bihar, Main Secretariat, Patna.
3. The Director, Integrated Child Development Service, Indira Bhawan 2<sup>nd</sup> Floor, Boring Canal Road, Patna.
4. The Commissioner and Secretary, Finance Department, Government of Bihar, Main Secretariat, Patna.
5. District Programme Officer, Patna.
6. District Programme Officer, Gaya.
7. District Programme Officer, Jehanabad.

... ... Appellants.

Versus

Rajendra Mishra, Son of Late Ram Sihasan Mishra, resident of Village - Baad, P.O. - Baad, P.S. - Karakat, District - Rohtas.

... ... Respondent.

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*Cases referred:*

- *State of Punjab & Ors. vs. Jagjit Singh & Ors. reported in (2017) 1 SCC 148*
- *P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors., reported in (2003) 2 SCC 632*
- *Union of India and Ors. Vs. Pushpa Rani and Ors. reported in (2008) 9 SCC 242*
- *U.O.I. Vs Harjeet Singh Sandhu reported in (2001) 5 SCC 593*
- *Duports Steel Ltd. Vs Sirs, (1980) 1 ALL ER 529*

*LPA - filed against the order of learned Single judge in writ petition by which it was held that respondent was entitled to 6th pay revision which has been given effect in the State Government with effect from 01.04.2007.*

*Respondent was appointed as an assistant in BISCOAUN in 1985. His services were deputed to ICDS, Social Welfare Department in 1986, and his service were absorbed in the state department only in 2013.*

*Held - Question of extending benefit of 6th Pay Revision, which was given effect with effect from 01.04.2007 is not permissible, since he had status of Government Service only with effect from 05.09.2013. (Para 3)*

*Respondent has failed to question the validity of his absorption dated 05.09.2013. To that extent, he is not entitled to retrospective absorption from the date of his deputation in the year 1996. In the absence of challenge to prospective absorption in the year 2013, respondent is not entitled to claim retrospective absorption. Moreover, 2013 policy decision of the State Government relating to absorption of such of those employees who are on deputation to various departments of the State were required to be absorbed only prospective. - Policy decision cannot be side-tracked by this Court. (Para 7)*

*LPA is allowed in part. (Para 4)*

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**Appearance :**

For the Appellants	:	Mr. Sunil Kumar Mandal, SC-3. Mr. Bipin Kumar, AC to SC-3
For the Respondent	:	Mr. D.K. Sinha, Senior Advocate.

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE JUSTICE SMT. G. ANUPAMA**  
**CHAKRAVARTHY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 20-07-2024**

Appellants have assailed the order of the learned Single Judge dated 17.01.2020 passed in C.W.J.C. No.11567 of 2017.

2. Grievance of the respondent Rajendra Mishra was that he is entitled to 6<sup>th</sup> Pay Revision, which has been given effect in the State Government with effect from 01.04.2007. His



service particulars are as under:

- (i). He was appointed as an Assistant in the then Rice Mill, which is part and parcel of BISCOMAUN on 31.01.1985.
- (ii). His services have been deputed to ICDS, Social Welfare Department on 06.12.1996.
- (iii). His services were absorbed in the State-Department on 05.09.2013.
- (iv). 6<sup>th</sup> Pay Revision was given effect from 01.04.2007.

**3.** The State Government evolved a policy decision of absorption of such of those persons who are working on deputation in various departments of the State Government on 29.07.2013, which has been given effect insofar as respondent Rajendra Mishra is concerned on 05.09.2013, resultantly, the absorption of respondent Rajendra Mishra is prospective in nature even assuming that it has retrospective effect which will be given effect only with effect from 29.07.2013, i.e. less than two months earlier to the date of absorption as on 05.09.2013. In this backdrop, question of extending benefit of 6<sup>th</sup> Pay Revision, which was given effect with effect from 01.04.2007 is not permissible, since he had status of Government Service only with effect from 05.09.2013. The same has not been taken note of by the learned Single Judge while allowing C.W.J.C. No.11567 of 2017. In other words, respondent Rajendra Mishra is entitled to have benefit of 6<sup>th</sup> Pay Revision, which was



introduced on 01.04.2007, only with effect from 05.09.2013, the date on which his services were absorbed in the State Government Department. To that extent the learned Single Judge has committed error. Hence, the appellants have made out a case so as to interfere with the order of the learned Single Judge dated 17.01.2020 passed in C.W.J.C. No.11567 of 2017 and it is set aside. The concerned appellant is hereby directed to extend the benefit of 6<sup>th</sup> Pay Revision to the respondent Rajendra Mishra only with effect from 05.09.2013. if it is not already extended, the same shall be extended within a period of three months from the date of receipt of this Judgment so also consequential monetary benefits during the period from 05.09.2013 to this day.

4. Accordingly, the present L.P.A. stands allowed in part.

5. At this stage, Mr. D.K. Sinha, learned Senior counsel for the respondent submitted that the present matter is covered by a decision of the learned Single Judge in the case of **Chanarik Baitha** passed in **C.W.J.C. No.6834 of 2017** decided on **20<sup>th</sup> August, 2018**. The order of the aforementioned learned Single Judge was the subject matter of L.P.A. No.1293 of 2019 in which L.P.A. was dismissed.



6. Learned counsel for the appellants submitted that Chanarik Baitha had failed to question the validity of absorption order to the extent that he should have been absorbed from retrospective date unless and until absorption order issued in the year 2013 is not assailed and seeking a direction from this Court to the extent that he is entitled to be absorbed from the date of deputation, i.e., from 06.12.1996, the present respondent is not entitled to. Such an issue has not been considered by the learned Single Judge in the case of Chanarik Baitha and so also by the Coordinate Bench. Therefore, the factual aspects have not been appraised. Moreover, State Policy decision to absorb deputationist was in the 2013 and it has no retrospective effect. Even if it is given retrospective effect large number of in service candidates rights would be affected and there would be administrative chaos.

7. We have noticed that respondent Rajendra Mishra has failed to question the validity of his absorption dated 05.09.2013. To that extent, he is not entitled to retrospective absorption from the date of his deputation in the year 1996. In the absence of challenge to prospective absorption in the year 2013, respondent is not entitled to claim retrospective absorption. Moreover, 2013 policy decision of the State



Government relating to absorption of such of those employees who are on deputation to various departments of the State were required to be absorbed only prospective. In the State Government policy decision there is no iota of material evidence to the extent that absorption is required to be given effect from the date of their deputation. Therefore, policy decision cannot be side-tracked by this Court. Accordingly, the aforementioned decision does not assist the respondent. Moreover, in the case of Chanarik Baitha, learned Single Judge and Co-ordinate Bench has not noticed the issue of State policy in the year 2013 was prospective and Chanarik Baitha had not challenged prospective absorption.

8. Almost in identical matter, this Court in LPA No. 185 of 2018 and connected matter wherein it is held that regularization of the respondents therein were regularized in the month of June, 2014 whereas they had claimed salary, ACP/MACP and other benefits during the intervening period from 14.07.2006 to 19.06.2014. The respondents who claimed that they are entitled for regularization with effect from July, 2006. On the other hand, services were regularized with effect from 20.06.2014. They have also not assailed the prospective regularization with effect from 20.06.2014 so as to claim service



benefits from July, 2006 to June, 2014. On the other hand, it was observed that at the best they are entitled to minimum pay-scale attached to the post in the light of the Hon'ble Supreme Court decision in the case of **State of Punjab & Ors. vs. Jagjit Singh & Ors.** reported in **(2017) 1 SCC 148**. Earlier it was subject matter of litigation in LPA No. 185 of 2018 (Birendra Kunwar vs. State of Bihar & Ors.) Petitioner's therein sought withdrawal of the SLP(Civil) Diary No. 21623 of 2023, the liberty to approach this Court, once again L.P.A. No. 1791 of 2018 and connected matters were decided on 15.02.2024 to the extent that in the absence of challenging to the prospective regularization. The respondents therein are not entitled to any monetary benefits attached to the post from July, 2006 till date of regularization on 19.06.2014. To the extent that their regularization was prospective in nature so also there was no challenge to the prospective regularization and seeking that they are entitled to retrospective regularization with effect from 14.07.2006, the same principle is applicable to the case in hand. Thus, respondent Rajendra Mishra has not made out a case to claim benefit of 6<sup>th</sup> pay revision with effect from 01.04.2007. On the other hand, he is entitled to benefit of 6<sup>th</sup> pay revision with effect from 05.09.2013 as observed earlier.





9. We have noticed that the respondent has not challenged State Policy dated 29.07.2013 and his absorption dated 05.09.2013. Further absorption policy of State cannot be tinkered as it will fall under the State domain as held by the Hon’ble Supreme Court in the case of **P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors.**, reported in **(2003) 2 SCC 632** and **Union of India and Ors. Vs. Pushpa Rani and Ors.** reported in **(2008) 9 SCC 242** that prescription of qualification for any post or any service condition, it is domain of the State and not the Court. In the case of **U.O.I. Vs Harjeet Singh Sandhu** reported in **(2001) 5 SCC 593** it is observed that the Courts are warned that they are not entitle to usurp legislative function under the guise of interpretation. Similar view was in the case of **Duports Steel Ltd. Vs Sirs**, **(1980) 1 ALL ER 529.**

(P. B. Bajanthri, J)

( G. Anupama Chakravarthy, J)

P.S./-

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