

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2133 of 2016

IN

Civil Writ Jurisdiction Case No. 17703 of 2014

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Jai Kumar Singh, S/O Late Jagnarain Singh, Resident of Village- Majhaua, P.O.-
Ara, P.S.- Ara Town, District- Bhojpur.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Finance Department.
2. The District Magistrate, Bhabhua.
3. The Executive Engineer, Minor Irrigation Division Bhabhua.
4. The Superintending Engineer, Minor Irrigation Bhabhua.
5. The Assistant Engineer, Minor Irrigation Sub Division, Mohania.

.... Respondents

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Any decision holding a work charge employee entitled for pension- any benefit on the basis of 1959 PWD Code is an erroneous decision till such an employee acquire the status of permanency by a conscious decision. (Para-7)

Petitioner never taken in permanent establishment- status of permanent government employee not acquired by a conscious decision- Ld. Single Judge committed no error in dismissing the writ application- LPA has no merit(Para-8,9)

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.... Respondents

Appearance :

For the Appellant : Mr. Rajendra Nath Sinha, Advocate

For the Respondents : Mr. Durgesh Nandan, AAG-14

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CORAM: HONOURABLE THE CHIEF JUSTICE**And****HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)****Date: 09-02-2018**

Heard learned counsel for the appellant and
learned counsel for the State.

2. The appellant, in the present case, is aggrieved by and dissatisfied with the judgment and order dated 20.08.2016 passed by the learned Writ Court holding that because the petitioner worked in the work charge establishment and retired in that capacity without being confirmed in the permanent establishment, he cannot be treated as a permanent employee under the State and hence the Writ Court refused to issue a direction commanding the respondents to pay pension and other retiral dues etc. to the petitioner which are otherwise



available to a regular employee of the State.

3. Learned counsel for the appellant has heavily relied upon Section 59 of the PWD Code and submits that a work charge establishment broadly means a staff of the establishment of which the expenses including the wages and allowances are chargeable to the work.

4. Learned counsel also submits that according to the Finance Departments Memo No. 10710 dated 17.10.2013, the petitioner having completed five years service till 21.10.1989 would be deemed to have been regularized and entitled for the relief.

5. Learned counsel for the State has opposed the Letters Patent Appeal and submits the view taken by the learned Single Judge is the correct view. Since the petitioner was not confirmed in the permanent establishment he would not be entitled to benefits which are available to the permanent employee under the State.

6. In our considered opinion, the issue raised by the learned counsel for the appellant is no longer *res integra*. One of the earliest judgment on the point involved in this case is a full Bench judgment of this Court in the Case of *Durganand Jha Vs. State of Bihar (F.B)* reported in 2007(4) *PLJR* 259.



7. Recently, in the case of State of Bihar Vs. Bimli Devi vide order passed in L.P.A. No. 1566/2015 decided on 24.11.2015, a co-ordinate Bench of this Court has held that any decision holding a work charge employee entitled for pensionary benefits on the ground that he has acquired a permanent status on the basis of 1959 PWD Code is an erroneous decision till such an employee acquire the status of permanency by a conscious decision. Paragraph 35, 36, 37, 38, 39, 40 of the said judgment are quoted hereunder for a ready reference:

“35. The expenses, including the wages and allowances of the staff in a *work charged establishment*, are chargeable to the works to be done by such an *establishment*. The pay and allowance of the employees, who are engaged in a *work charged establishment*, are, generally, shown as a separate cost under the estimated cost of the works. Inherently, therefore, the appointment of a *work charged employee* is temporary in nature inasmuch as the engagement comes to an end, which the project, when a *work charged establishment* undertakes, is complete.

36. In other words, the *work charged employees* are engaged on temporary basis till complete execution of the specified work for which the establishment may have been created. Since the very nature of the employment of a *work charged employee* is inherently temporary in nature, his service *automatically* comes to an end on the completion of the work, which was sole purpose of the establishment unless, otherwise, directed.

37. A *regular employment* under an establishment, thus, differs from a *work charged establishment* and the persons, employed for these two types of establishments, form two separate and distinct classes. Consequently, if a separate set of rules are framed for persons engaged on *work charged establishment* and the general rules, which are, otherwise, applicable to persons working on the *regular establishment*, are not made applicable to the *work charged employees*, it cannot be said that the *work charged employees* were



being treated arbitrarily or being discriminated against inasmuch as a Government has the freedom to frame different rules for different classes of its employees.

38. *Family pension* is provided to the family of a person, whose services are covered by the scheme relating to grant of *family pension* or the statute governing the grant of *family pension*. In the State of Bihar, *pension* is made available to a person by virtue of Rule 58 of Bihar Pension Rules, 1950, which we have reproduced above.

39. In order to apply Rule 58 of Bihar Pension Rules, 1950, his service has to be of the nature, as contemplated by Rule 58 of Bihar Pension Rules, 1950, Rule 58 of Bihar Pension Rules, 1950, requires that in order to be eligible for pension, a service must be paid by the Government and the employment must be substantive and permanent. Since a *work charged employee's* service is not substantive and permanent, he cannot claim *pension* under Rule 58 of Bihar Pension Rules, 1950, unless the provisions of Rule 58 of Bihar Pension Rules, 1950, are made applicable to him by any statute or by some executive instruction or scheme provided that such a executive instruction or scheme is, otherwise, valid in law. No statutory provision, executive instruction/circular or notification or scheme has been brought to our notice, which makes a *work charged employee* entitled to *pension* in the State of Bihar. A *work charged employee's* entity and status materially differs from that of the *regular employee*. The *permanent establishment* of a State Government has the state of permanency and will continue until abolished; whereas the *work charged establishment* is created as a temporary measure to complete a particular work and the engagement of the employees would come to an end, when the work is complete.

40. Necessarily, therefore, a person, engaged to work as a *work charged employee*, will cease to be an employee as soon as the work of the charged establishment comes to an end. The rights and status of a *work charged employee* are, therefore, different from that of a *regular employee*."

8. In view of what has been held hereinabove in the admitted facts of this case that the petitioner was never taken in the permanent establishment and had not acquired status of a permanent government employee by a conscious



decision, the learned Single Judge has committed no error in dismissing the writ application.

9. This Letters Patent Appeal has no merit. It is, accordingly, disposed off.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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