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**(2023) 02 PAT CK 0078**

**Patna High Court**

**Case No:** Letters Patent Appeal No. 1793 Of 2011 In Civil Writ Jurisdiction Case No. 6892 Of 2003

State Of Bihar

APPELLANT

Vs

Brij Kishore Singh

RESPONDENT

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**Date of Decision:** Feb. 23, 2023

**Hon'ble Judges:** P. B. Bajanthri, J; Arun Kumar Jha, J

**Bench:** Division Bench

**Advocate:** Sanjay Kumarac, Ravindra Nath Dubey

**Final Decision:** Dismissed

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**Judgement**

1. The present LPA is filed by the State of Bihar assailing the order of the learned Single Judge dated 12.01.2011 passed in CWJC No. 6892 of 2003.

2. Brief facts of the case are that respondent was appointed in the year 1983 as a Chainman by the Special Land Acquisition Officer on daily wage

basis, his services were ratified by the Director and he continued. In the year 1989, he was further appointed to the post of Accounts Clerk and

continued as such till his services were terminated on 17.03.2003 vide (Annexure 6) of the writ-petition he was dismissed from service. It was subject

matter of C.W.J.C. No. 6892 of 2003. Learned Single Judge has allowed the writ-petition. Extract of the order is reproduced here under:-

“This writ petition is disposed of with the direction that the petitioner’s reversion from Accounts Clerk was bad. Petitioner, accordingly, be

reinstated as Accounts Clerk and dismissal of petitioner by virtue of Annexure-6 has to be quashed. It is, however, made clear that petitioner would

get remuneration either as Chainman or as Accounts Clerk only for the period where he has so worked. In other words, for the period when he was

reverted as Chainman and worked as Chainman notwithstanding entitlement of Accounts Clerk he would get remuneration of Chainman but from the

time he is reinstated as Accounts Clerk he would be entitled to full remuneration of the Accounts Clerk keeping in view notional continuity in service

as Accounts Clerk. The decision in this regard and payment in this regard must be made to the petitioner within three months by the Director, Land

Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna.

With the aforesaid observations and directions, the writ petition stands disposed of.Ã¢â¬â€œ

3. Feeling aggrieved and dissatisfied with the order of the learned Single Judge, State preferred present LPA on the sole ground that initial

appointment of the respondent was by an incompetent authority, therefore, further service conditions of the respondent is to be nullified. Accordingly,

the State has taken a decision to dismiss him from service with reference to the post of Accounts Clerk.

4. In this regard learned counsel for the State relied on decision in the case of LPA No. 675 of 2000 and connected matter insofar as The State of

Bihar vs. Siya Ram Choudhary and Ors. in LPA No. 681 of 2000. The Siya Ram Choudhary and Ors. filed Civil Appeal No. 5682-5684 of 2004 and it

was decided against Siya Ram Choudhary and Ors. In the Siya Ram Choudhary case also the initial appointment was by an incompetent authority

hence, the order of the learned Single Judge is liable to be dismissed in the light of decision in the case of Siya Ram Choudhary and Ors.

5. Per-Contra learned counsel for the respondent cited decision in the case of Bhola Rawat Vs. State of Bihar passed in CWJC No. 8063 of 2003

decided on 08.02.2008 further, LPA No. 392 of 2008 was decided on 12.07.2011 (State of Bihar Appeal) and further State of Bihar preferred petition

before the Apex Court which is numbered as CC 13413/2012 State of Bihar and Ors. Vs. Bhola Rawat in which State appeal was dismissed.

Therefore, the cited decision on behalf of the State has no assistance for the State. It is also submitted that facts of the case of Siya Ram Choudhary

is different from that of Brij Kishore Singh case. On the other hand, Brij Kishore Singh case is identical to that of Bhola Rawat.

6. Heard learned counsel for the respective parties.

7. Respondent was appointed as a Chainman in the year 1983 by the Special Land Acquisition Officer on daily wage basis. His services were ratified

by the Director and he continued as such, thereafter, he was appointed as an Accounts Clerk. In this backdrop whether dismissing Respondent-Brij

Kishore Singh in the year 2003 is in order or not?

8. No doubt it is true that initial appointment to the post of Chainman was by an incompetent Authority. At the same time it is to be noted that

respondent was appointed to the post of Accounts Clerk and there are no defects insofar as appointment to the post of Accounts Clerk. In the guise

of initial appointment to the post of Chainman was not in order and thereafter, Appellant's Department cannot take away the service benefits

which was assigned to the respondent like appointing him to the post of Accounts Clerk. Further it is to be noticed that respondent is serving the

concerned Department from the year 1983. He had a permanent status in the year 1989 as and when he was appointed to the post of Accounts Clerk

that cannot be disturbed after more than a decade in the year 2003. In fact Apex Court in the case of Secy., State of Karnataka and Ors. vs. Uma

Devi reported in (2006) 4 SCC 1, has made an observation that concerned authorities shall not reopen the already regularized or such of those

employees who have attained the permanent status. In this case, action of dismissal of respondent's services would amount to reopening the

permanent status granted to the respondent.

9. It is further noticed that Siya Ram Choudhary case is not assisting the State with reference to factual aspects of the matter. Siya Ram Choudhary

as on the date of filing writ-petition he was still ad-hoc employee on the other hand, Brij Kishore Singh-respondent had a permanent status in the post

of Accounts Clerk in the concerned Department, therefore, the cited decision on behalf of the Appellant-State is hereby distinguished. Further counsel

for the respondent relied on Bhola Rawat case. Bhola Rawat case is almost identical to that of Brij Kishore Singh case, the one and only difference is

that Brij Kishore Singh was initially appointed as a Chainman and thereafter, he was appointed to the post of Accounts Clerk. In Bhola Rawat case,

he was also initially appointed as a Chainman and thereafter, he was appointed to the post of Typist and further he has earned promotion to the post of

Amin.

10. In the light of these facts and circumstances the Respondent-Brij Kishore Singh's case is covered by Bhola Rawat case as well as

observation made by the Apex Court in the case of Uma Devi.

11. Accordingly, State has not made out a prima-facie case so as to interfere with the order of the learned Single Judge dated 12.01.2011 passed in

CWJC No. 6892 of 2003.

12. The LPA stands rejected.