

(2023) 04 PAT CK 0034

Patna High Court

Case No: Letters Patent Appeal No. 846 Of 2019 In Civil Writ Jurisdiction Case No. 6140 Of 2015

Md. Wasim Uddin

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: April 17, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14
- Indian Penal Code, 1860 - Section 21

Hon'ble Judges: Ashutosh Kumar, J; Harish Kumar, J

Bench: Division Bench

Advocate: Mahesh Prasad Singh, Yashraj Bardhan

Final Decision: Dismissed

Judgement

1. The challenge in the present Letters Patent Appeal is to an order of the learned Single Judge dated 25.06.2019 passed in C.W.J.C. No. 6140 of

2015 and other analogous writ petitions whereby the claim of the appellant and other identically situated employees of the Bihar Industrial Area

Development Authority (hereinafter referred to as "the BIADA") for grant of pension have been turned down.

2. The short facts, which led to the filing of the present appeal is that the appellant was appointed on the post of Typist-cum-Clerk on 27.08.1976 by

the three Men Committee headed by the Managing Director of the BIADA in North Bihar Industrial Area Development Authority Limited, who was

subsequently transferred to Darbhanga Industrial Area Development Authority and promoted on the post of Assistant and after serving for over a

period of 37 years, superannuated on 31.01.2014.

3. It is the case of the appellant that different Industrial Area Development Authorities were created by the State Government on the basis of the Ordinance way back in the year 1972 and 1973 and subsequently, the Bihar Industrial Area Development Authority Act was enacted and under the Act different authorities started functioning. Further, after bifurcation of the State of Bihar and Jharkhand, out of six authorities, three authorities i.e. Patna, Darbhanga and North Bihar Industrial Area Development Authority remained with the State of Bihar and they have been amalgamated as Bihar Industrial Area Development Authority.

4. While assailing the order under appeal, it is submitted that the grievance of the appellant hinges around the fact that right from inception of the establishment of the Authority, the services of the appellant and other employees of the Authority were governed by the Bihar Service Code, Bihar Finance Rules, Bihar State Employees Conduct rules and the letters issued by the State Government from time to time. The appellant and other employees have been allowed the benefit of 3rd, 4th, 5th and 6th revised pay scale after getting the consent of the State Government and promotions have also been accorded as per their eligibility. The next line of the submission of the appellant is that all the employees and the appellant have served the authority for all along as a public servant, as defined under Section 21 of the Indian Penal Code. However, the Industry Department, Bihar, Patna, which is the controlling department, unilaterally, vide letter no. 7459/Patna dated 23.06.1980 imposed Contributory Provident Fund Scheme on all the employees of the Authority against their interest and in dissonance to the provisions of the Act. Nonetheless, the employees of the State Government, who were transferred to and absorbed in BIADA were allowed the benefit of pension. Thus, clear discrimination has been caused to the appellant and other similarly situated employees of the Authority without any justifiable reason, in complete violation of Article 14 of the Constitution of India. Certain instances have been placed before this Court who have been allowed the benefit of pension irrespective of the fact that their services were governed by the same rules and regulations.

5. It would be relevant to state here that the appellant and other identical situated persons approached the Secretary of the BIADA for grant of

pension, which was negated vide letter no. 5791 dated 26.09.2014 in the light of the order of the Industry Department, Government of Bihar as

contained in Memo No. 4345 dated 02.09.2011. The appellant and others, being aggrieved by the aforementioned orders moved before this Court in

C.W.J.C. No. 6140 of 2015 and other analogous writ petitions, the order of which is impugned herein.

6. Per contra, the learned counsel for the BIADA has submitted that from the record, it is manifestly evident that way back in the year 1980 itself,

Contributory Provident Fund Scheme was implemented in BIADA, similar to the other Boards and Corporations and at no point of time, the

Government has taken any policy decision to introduce and implement the pension scheme to the employees of the BIADA. He further submits that

similarly situated employee had approached this Court in C.W.J.C. No. 19748 of 2012, which was disposed of vide order dated 03.01.2013 with a

direction to the Principal Secretary, Department of Industries, Government of Bihar to take a policy decision on this score one way or the other so that

the issue may be put to rest.

7. The claim of the employees of the BIADA was duly considered and after due deliberation and getting opinion from the Finance Department, the

same has been turned down way back in the year 2011 vide Memo No. 4345 dated 02.09.2011 itself by the Principal Secretary, Industry Department,

Bihar, Patna.

8. Having given anxious consideration to the submissions made on behalf of the parties, we find that admittedly, the appellant was duly appointed by

the Managing Director of the BIADA and he was, at no point of time, in Government service, though the BIADA has adopted Bihar Service Code

and Civil Services (Classification, Control and Appeal) Rules for regulation of the service condition of its employees. It is not in dispute that even the

Darbhanga Industrial Area Development Authority, Darbhanga was an authority created under the BIADA Act, which later on was amalgamated

with other Authorities as BIADA and being an autonomous authority, does not have a pension scheme. Right from very inception, the employees are

the members of the Contributory Provident Pension Fund Scheme and; notwithstanding that under the Act, it is stipulated that every employee of the

BIADA would be deemed to be a Public Servant within the meaning of Section 21 of the Indian Penal Code, but by no stretch of imagination it makes a Public servant a Government servant.

9. At this juncture, this Court also deems it apposite to observe that the law does not permit a person to both approbate and reprobate simultaneously.

The principle is based on the doctrine of election, which postulates that no party can accept and reject the same instrument and that a person cannot

say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and then

turn round and say it is void for the purpose of securing some other advantage. Thus the appellant, who has already contributed to Contributory

Provident Fund Scheme and his dues have already been settled upon his superannuation, cannot be permitted to turn round and challenge the same by

taking a plea that no service condition have been framed till date. Reliance may be had on the judgment rendered by the Honâ€™ble Supreme Court

in the case of R.N. Gosain Vs Yashpal Dhir, AIR 1993 SC 352.

10. So far the submission of the appellant with regard to certain instances wherein pensionary benefits have been granted to some other employees of

the BIADA treating them to be Government servant, is concerned, the same has been aptly clarified by the learned counsel representing the BIADA

that those employees were Government employees recruited and appointed by the Government. They were then transferred and absorbed in BIADA,

thus treating them to be primarily Government employees and they have been allowed the benefit of pension on pro-rata basis considering the services

rendered by them with the State Government only.

11. This Court finds force in the submission of the learned counsel appearing on behalf of the respondent that his initial appointment itself was by and

in the Industrial Development Authority; hence the case of those persons cannot be stated to be the same and as such no case of any discrimination is

made out.

12. Admittedly the appellant contributed to the Contributory Provident Fund Scheme and his dues have already been settled upon his superannuation.

The learned Single Judge had rightly refused to issue writ of mandamus for directing the authority for grant of pension to the employees of BIADA

and that the grant of pension was a matter of policy and it was within the wisdom of the Government to take a policy decision in the matter.

13. In view of the discussions made hereinabove, this Court does not find any reason or occasion to interfere in the order under Appeal.

14. The present appeal, sans any merit, stands dismissed.