

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.19846 OF 2017

(ARISING OUT OF SLP (C) No.31638 of 2016)

Raj Balam Prasad & Ors.

...Appellant(s)

VERSUS

State of Bihar & Ors.

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) The appeal is filed against the final judgment and order dated 29.02.2016 passed by the High Court of Judicature at Patna in Letters Patent Appeal No.1760 of 2012 whereby the Division Bench of the High Court allowed the appeal filed by the respondents herein by setting aside the order dated

08.05.2012 of the Single Judge in C.W.J.C. No.4247 of 2012 which allowed the appellants' writ petition and issued a writ of mandamus directing the State to regularize the services of the appellants on the post of "Muharrirs" .

3) The controversy involved in the appeal is confined to short facts, which, however, need mention hereinbelow to appreciate the same.

4) The short question, which arises for consideration in this appeal, is whether the Division Bench of the High Court was justified in dismissing the appellants' writ petition by allowing the intra court appeal filed by the respondents herein and reversing the order of the Single Judge which had allowed the appellants' writ petition by issuing a mandamus directing the State(respondents) to regularize the appellants on the post of "Muharrir".

5) Eight (8) persons were appointed on the post of "Muharrir" in the Office of Collector, Saran Chpara (Bihar) in the year 1987-88 by the State (Collector).

These eight persons included present four (4) appellants herein. The appointment of these eight persons was made as temporary appointment for a period of three months. These appointments were made by the authority concerned by taking recourse to the powers under Rule 57-A of the Bihar Certificate Manual, the instructions issued under the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as “the Act”).

6) These temporary appointments were made for disposal of several pending certificate cases, which could not be disposed of for want of adequate hands available in the office. However, the services of the eight persons were extended for sometime by issuing extension orders. It was up to the year 1991.

7) These eight Muharrirs filed a writ petition (C.W.J.C. No. 5142 of 1991) in the High Court at Patna claiming therein a relief for their regularization in services as Muharrir. By order

dated 03.04.2001, the Single Judge disposed of the writ petition by granting liberty to the writ petitioners to submit their representation to the Competent Authority to enable them to examine their grievances on the question of regularization in service.

8) The writ petitioners (8) felt aggrieved and filed intra court appeal. The Division Bench dismissed the appeal (L.P.A. No.434 of 2001) by order dated 28.07.2007 but further made pertinent observations and, in consequence, also issued directions.

9) In the opinion of the Division Bench, when the services of the writ petitioners had come to an end on 03.06.1991 and 19.06.1991 and when these two orders were not stayed by the Writ Court (Single Judge) in the writ petition filed by the writ petitioners then how the writ petitioners could continue in services even as daily wagers thereafter and how some of the writ petitioners were able to get their services regularized from 10.10.2006. The

Division Bench, therefore, while expressing their concern directed the State Vigilance Department to look into the matter and take appropriate steps in accordance with law.

10) As mentioned above, in the meantime, out of eight Muharrirs, the services of five Muharrirs including one more person by name Mr. Sugriev Singh were regularized by order dated 10.10.2006.

11) The writ petitioners, whose services could not be regularized, felt aggrieved and filed SLP in this Court. This Court dismissed the SLP and granted liberty to the petitioners to file representations to the concerned authority for ventilating of their grievance.

12) It is not in dispute that the Competent Authority, by order dated 15.01.2012, rejected the representation made by the appellants stating therein that since their services had already come to an end in 1991, no orders for their regularization could now be passed.

13) These persons then filed another round of writ petition (C.W.J.C. No.4247 of 2012) and claimed the same relief of regularization in the services by basing their case on one Circular dated 16.04.2008. The Single Judge allowed the writ petition by order 29.08.2011 and issued a mandamus against the State and the concerned department to regularize the services of the appellants on the post of Muharrirs.

14) The respondents herein (State and the concerned departments) felt aggrieved and filed intra Court appeal before the Division Bench. By impugned judgment, the Division Bench allowed the State's appeal and dismissed the appellants' writ petition. It is against this judgment, the writ petitioners have felt aggrieved and filed this appeal by way of special leave before this Court.

15) Heard Mr. Praneet Ranjan, learned counsel for the appellants and Mr. Manish Kumar, learned counsel for the respondents.

16) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal. In our opinion, the view taken by the Division Bench appears to be just, legal and proper and hence does not call for any interference.

17) This is what the Division Bench held for allowing the appeal and dismissing the appellants' writ petition:

“We have heard learned counsel for the parties and find that the order passed by the learned Single Judge is not sustainable in law. The order passed in LPA No.434 of 2001 dated 28th of July, 2008 was not brought to the notice of the learned Single Judge. It is further contended that even if the order dated 10.10.2006 was not have set aside, the fact remains that such order of regularization could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status could be conferred to those who were in service and not to those whose service had come to an end many years ago. Such an order could not be made basis of permanent status through the writ court. Such order dated 10.10.2006 is not enforceable in law. The representation having been declined in the light of the circular dated 16.04.2008, we do not find that the writ petitioners were entitled to any direction to treat them as regular employees.”

18) We agree with the reasoning of the Division Bench quoted *supra*.

19) In our opinion also, when the appointment of the appellants (writ petitioners) was made for a fixed period in exercise of the powers under Rule 57-A and the said appointment period having come to an end in the year 1991 after granting some extension, we fail to appreciate as to how the appellants could claim to remain in service after 1991.

20) One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and Rules framed thereunder and once such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some extensions to them for some more period.

21) In other words, the grant of extension to work for some more period to the writ petitioners could never result in conferring on them the status of a permanent employee or/and nor could enable them

to seek regularization in the services unless some Rule had recognized any such right in their favour.

22) That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the appellants to have claimed continuity in service for want of any extension order in that behalf.

23) We have perused the Circular dated 16.04.2008 (Annexure P-7) issued by the State. This Circular only says that if any temporary persons are appointed for a particular project and if they are found to be of some utility, their services can be regularized as per Rules.

24) As mentioned above, so far as the cases of these appellants are concerned, their representations were examined by the State but were rejected finding no merit therein. One of the reasons for rejection of the representation was that the services of the appellants had already come to an end in 1991 and, therefore, no orders to

regularize their services could now be passed after such a long lapse of time.

25) As rightly observed by the Division Bench in the impugned judgment, the earlier order of the Division Bench in which a vigilance inquiry was ordered to find out as to how an order of regularization could be passed in favour of some Muharrirs was not brought to the notice of the Single Judge which led him to allow the appellants' writ petition.

26) Learned counsel for the appellants, however, argued vehemently that the order of the Single Judge deserves to be restored by setting aside the impugned judgment of the Division Bench as the same is based on proper reasoning but in the light of what we have held supra, we cannot accept his submission. In our opinion, the Division Bench was right in setting aside of the order of the Single Judge and we concur with the reasoning and the

conclusion of the Division Bench. In addition, we have also given our reasoning in support thereof.

27) In the light of foregoing discussion, we find no merit in the appeal, which thus fails and is accordingly dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
November 27, 2017