

Patna High Court - Orders

The State Of Bihar & Ors vs Chitranjan Jha & Ors on 13 October, 2011

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3433 of 2010

Chitranjan Jha & Anr.

Versus

The State Of Bihar & Ors.

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with Civil Review No.98 of 2011 IN (LPA 688/2009) The State Of Bihar & Ors Versus Chitranjan Jha & Ors

----- 10 13-10-2011 Heard the parties.

The review application preferred by the State and contempt petition preferred on behalf of appellants of LPA no. 688/2009 have been heard together because they relate to a Division Bench judgement and order dated 26-10-2010 whereby one LPA preferred by the State bearing no. 373/2004 and other preferred by the petitioners of contempt petition were allowed. On account of Division Bench judgement a grievance has been raised on behalf of petitioners of contempt petition that opposite parties are violating the order of the Division Bench by not paying pension and other retiral dues of the original writ petitioner, Umakant Jha. On the other hand in the review application the State has taken the stand that the order allowing LPA no. 688/2009 deserves to be reviewed and that LPA should be dismissed.

Paragraph 21 of the Division Bench judgement (annexure-1) discloses that LPA no. 688/2009 was allowed on a concession made by learned counsel for the State that since the concerned employee had completed 25 years of service when his resignation was accepted, his case would be covered by Rule 135 of Bihar Pension Rules and, therefore, the employee shall be entitled to all the retiral benefits.

On examining the provisions of Rule 135 of Bihar Pension Rules, it is apparent that the concerned employee was not entitled to benefit of that Rule because that applies only to Government servants mentioned in Rule 5 which contains schedule of services which does not include the service to which the employee concerned belonged.

In our considered view, LPA no. 688/2009 has been disposed of without considering the relevant provisions in the Bihar Pension Rules and, hence, the order allowing LPA no. 688/2009 requires to be reviewed and recalled. Accordingly, we allow the review application and recall the judgement and order dated 27-1-2010 insofar as it relates to and allows LPA no. 688/2009. As a result, LPA no. 688/2009 shall be restored to its original file and shall be listed for hearing under the appropriate heading before any appropriate Bench after two weeks.

In view of aforesaid order, nothing remains to be implemented through the contempt petition. Hence the contempt petition is dismissed as infructuous.

(Shiva Kirti Singh, J.) (Shivaji Pandey, J.) BKS/-