

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9679 of 2008

=====

Jai Prakash Narayan S/o Late Bibhishan Prasad, Resident of Village & P.O. Sokhodeora P.s. Kauakol, Distt – Nawada, at present posted at District Industry Centre Jehanabad as Cashier

.... Petitioner

Versus

1. The State of Bihar Through The Commissioner cum Secretary Department of Industry Govt of Bihar New Secretariat, Patna
2. The Director, Department of Industry, Govt. of Bihar New Secretariat, Patna
3. The General Manager, District Industry Centre, Gaya, District Gaya
4. The General Manager, District Industry Centre, Jehanabad, Distt - Jehanabad

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ravindra Kumar Sinha, Advocate
For the State : Mr. Jai Shankar Barnwar, G.A. 5

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 30-09-2015

Heard learned counsel for the petitioner and the State.

The petitioner has filed this application for direction to the respondent authorities to continue the service of the petitioner taking into consideration his initial appointment and grant all consequential benefits such as pay protection, increment etc. after quashing the order dated 3.3.2003 issued under the signature of Director, Department of Industry, Bihar, Patna taking a decision that, in view of the order passed by this Court in C.W.J.C. Nos. 3712/94, 3066/94 and 2410/94, the earlier order dated 24.4.99 stands suppressed in part and by such order the persons, who have been shown in the aforesaid order, were decided to be absorbed in

Government services from 28.2.94 which was the date of take over of Gaya and Muzaffarpur District Industry Centre.

In the impugned order, it has been clearly stated in Clause 2 that the services rendered by the employees prior to 28.2.94 would not be considered for any other purpose.

It is apt to point out here that the earlier notification / decision of the Government for taking over the Gaya and Muzaffarpur Industry Centre from 28.2.94 but without any decision regarding absorption of the employees working there, came to be challenged in C.W.J.C. Nos. 3712/94, 3066/94 and 2410/94 which were heard analogous and allowed by a common judgment dated 13.3.1997 as contained in Annexure 1. The relevant passage from the aforesaid judgment is reproduced as under:

“Accordingly the State Government is directed to take over the services of the petitioners and absorb them in Government Services on such terms and conditions as are applicable to the officers and employees working in other District Industries Centres which are being run and managed by the State Government and it shall be open for the State Government to retrench or terminate the services of the petitioners in accordance with law if the circumstances so warrant and until the petitioners continue in service and the State Government does not absorb them they shall continue to receive the same emoluments including the arrears of salary if due, which were being paid to them prior to 28.2.1994 and the

directions in the impugned order (Annexure '1' to C.W.J.C. No. 3712 of 1994) to the contrary are set aside.

The Writ Petitions are allowed to the extent indicated above but there shall be no order as to costs. "

However, when the aforesaid order was not being complied, several applications for initiation of proceeding of contempt were filed. They were disposed of vide order dated 4.2.2003, as contained in Annexure 2 observing as under:

"The respondent though in their original counter had submitted number of the explanations but at this point of time through the learned counsel state before the Court that they are ready and willing to absorb the petitioners in accordance with the directions as contained in the judgment dated 13th March, 1997 passed in C.W.J.C. No. 3712 of 1994 (Dr. Anirudh Prasad Vs. the State of Bihar and analogous cases). It is also submitted by the respondents that final orders absorbing them shall be passed within one month from today.

In view of the statements made by the learned counsel for the respondent State nothing further is required to be done in the matter. The petitions are disposed of hoping that the respondents shall not give any cause to the petitioners to again come to this Court."

It would appear from perusal of the aforesaid order that, since the State was willing to absorb the petitioner in terms of Annexure 1, further direction was given to absorb them within a period of one month. It appears that, thereafter, Annexure 3 as well as Annexure A came to be issued on 3.3.2003 with respect to 31



persons stating that their services have been regularized from the date stated in column no. 5 which is 28.02.1994 in all the cases. The petitioner wants to challenge Annexure 3 also by filing I.A. No. 7981/2015. Annexure A which has been appended in the interlocutory application as Annexure 7 series stating that in fact his services should have been regularized since his initial date of appointment which, according to the petitioner, was the import of the judgment rendered by the learned Single Judge as contained in Annexure 1.

Per contra, learned counsel appearing for the State submits that from perusal of the direction contained in Annexure 1 it would appear that the State Government was directed to take over the services of the petitioner by absorbing them in Government service on such terms and conditions as are applicable to the officers and employees working in other Industrial Centres, therefore, their services were regularized on the scale which was permissible to such class of employee in different Industrial Centres. The date of absorption was chosen only due to the reason that takeover was from that date and, thus, the State Government did not decide to absorb their services from their initial dates of appointment with the concerned non governmental organization and this fact was clearly stated in clause 2 of Annexure 3. The petitioner and others were



allowed to work in terms of Annexure 3. They were doing the work and drawing their salary and no body had challenged the same for about five years. As such, that has attained its finality. After retirement, one of such persons, i.e., the petitioner has chosen to file this application challenging Annexure 3 and also Annexure 7 which is a subsequent order dated 30.5.2008.

Learned counsel for the petitioner submits that the order dated 30.8.2008 has been challenged only due to the reason that on that date it has been stated that their services would be regularized from 28.2.1994 and not from the initial date of their appointment with the non governmental organization and, therefore, the cause of action arose subsequently.

I do not find any force in such submission made on behalf of the petitioner. In fact the Annexure 3 is quite clear as it stands stated that about 11 persons, who were named in the Annexure 3, were being absorbed from the date of takeover of the concerned Industrial Centre, i.e., 28.2.1994. It has further been explained that the earlier period of services of those employees with the private organization prior to 28.2.1994, would not be considered for any purpose. The petitioner being one of the eleven persons described in Annexure 3 could have challenged the aforesaid decision immediately but he waited till his retirement. He

has filed this writ application in fact on 30.06.2008 on the date of his retirement. After about 7 years of filing of the writ petition, he has filed I.A. No. 7981/2015 for challenging the order 30.5.2008. Had it been the case that the name of the petitioner was not there in Annexure 3 but was subsequently inducted in Annexure 7 series dated 30.05.2008, he may well have been permitted to assail the subsequent order. However, his name was already there in Annexure 3 and, thereafter, he had worked and received his salary also without raising any objection till the date of superannuation, thus, now he cannot be allowed to raise such issue.

Accordingly, this writ application is dismissed.

(Dr. Ravi Ranjan, J)

Spd/-

U			
---	--	--	--