

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16929 of 2014

Vishwapati Devi wife of late Mosafir Mahto, resident of village- Ekara,P.O.
Thathan Bujurg, P.S. Hajipur Sadar, District- Vaishali.

.... Petitioner

Versus

- 1.The State of Bihar through the Engineer in Chief Cum Special Secretary, Road Construction Department, Govt., of Bihar, Patna
2. The Special Secretary, Road Construction Department, Govt., of Bihar, Patna
3. The Deputy Secretary, Road Construction Department, Govt., of Bihar, Patna
4. The Superintending Engineer, Saran Road Circle, Hajipur.
5. The Executive Engineer, Vaishali Road, Hajipur.
6. The Assistant Engineer, Road Sub-division, Hajipur.
- 7.The Additional Secretary, Department of Finance, Govt. of Bihar, Patna.

..... Respondents

Appearance :

For the Petitioner : Mr. Bipin Kumar

For the State : Mr. Amit Kumar Anand, A.C. to G.P. 15

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 20-02-2015

The petitioner is a widow of late Mosafir Mahto. She seeks two reliefs. (i) that the husband of the petitioner should be treated as regular employee under the respondent- State of Bihar in terms of exercise done as he had rendered more than 33 years of service under the respondent- State till God willed otherwise and took him away on 23.12.2013. Alternatively and natural corollary would be that the petitioner would be entitled to pensionary benefits and other benefits related thereto. If the petitioner succeeds in getting direction upon the respondent to give effect to the notifications dated 04.11.2013 and 28.02.2014, which are Annexures C and D to the counter affidavit filed on behalf of the respondent- State. She succeeds.

It is not disputed from the evidence available on record and brought by the respondent- authority that husband of the petitioner initially joined as a work charge employee in Work Charge Establishment as a Road Rollar Khalasi



sometime in the year 1980. He was then promoted to the post of Road Rollar Driver. He continued to work uninterruptedly so the respondent- authority considered his case for regularization along with similarly situated persons. Name of the husband of the petitioner figures at serial no.2 in Saran Division, which Annexure – D confirms. Earlier his name was at serial no.20 when the decision for regularization was processed. Now husband of the petitioner is dead. The decision, which had already been taken initially for regularization, is not being implemented or enforced.

Submission of the counsel for the petitioner is that in similar circumstances on almost identical situation this Court in the case of Bimli Devi – v- The State of Bihar & ors which was CWJC No. 5159 of 2013 decided on 27.08.2014 gave a direction upon the respondent- authority to regularize the erstwhile employee even though he died and treat him to be regularized at least till the date of his death, which is 23.12.2013. The family will continue to get the benefit of pension etc. treating the erstwhile employee to be a regular employee and the court also drew support from such a view on the basis of a decision rendered in the case of Most.Baby Devi –v- State of Bihar reported in 2012(3) PLJR 910. He emphasised upon para 14 of the said decision, which reads as under:

“14. Learned counsel for the petitioners in rejoinder submitted that original writ petitioner in CWJC no.4517 of 2007 moved this Court in C.W.J.C. No.6217 of 2003 for compliance of the Government circular dated 22.10.1984 and resolution dated 23.10.1987, 20.9.1990 issued for regularization of the Work Charge Employees and this Court under orders dated 15.3.2004, Annexure-8 (in CWJC no.4517 of 2007) directed the State- respondents to consider his case for regularization as per the cut-off date for entry in the Work Charge Establishment fixed under Resolution No.6394 dated 23.10.1987 but the Commissioner-cum-

Secretary of the Department ignoring the mandate of circular dated 22.10.1984 and resolution dated 23.10.1987, 20.9.1990 passed erroneous order dated 29.3.2006, which was assailed by the original writ petitioner of C.W.J.C. No.4517 of 2007. During the pendency of C.W.J.C. No.4517 of 2007, on account of ill-luck the original writ petitioner left for heavenly abode on 2.8.2008, as such, even though the right of the original writ petitioner to seek regularization may not be surviving but the widow petitioner no.1 is entitled to enforce her right for grant of family pension. In this connection, learned counsel also relied on the judgment of the another Single Judge in the case of Shambhu Sharan Singh vs. The State of Bihar & ors., reported in 1998 (3) PLJR 908. In the case relied upon the deceased employee was appointed by the competent authority as Choukidar in the Work Charge Establishment. While serving in the Work Charge Establishment for about six years he died on 6.1.80. Relying on the circular of the Government dated 22.10.1984 that Work Charge Employees completing five years of continuous satisfactory service is entitled to be regularized retiral benefits of the deceased Work Charge Employee was directed to be paid to the heirs of the deceased employee who died while serving in the Work Charge Establishment for more than six years.

The writ application is allowed. The respondents are directed to issue a notification showing the husband of the petitioner to be a regular employee till the date of his death and thereafter process the claim of retiral dues of the present petitioner on the basis of the ratio rendered in the case of Most. Baby Devi (supra). The decision in this regard must be taken within a period of three months from the date of filing of an application with a copy of this order by the petitioner.

(Ajay Kumar Tripathi, J)

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