

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4651 of 2013

In

Civil Writ Jurisdiction Case No. 16899 of 2012

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1. Kamal Kumar Vasudeo, Son of Sri R.N. Vasudeo 2 M/37,
Near T.V. Tower, Mahatma Gandhi Nagar, P.S.- Agamkuan,
District- Patna-26
 2. Ambika Prasad Singh, Son of Late Ram Jatan Singh Resident
of Bijauli Basdiha, P.S.- Aurangabad, District- Aurangabad
 3. Krishna Nand Pandey, Son of Late Ram Bachan Pandey,
Resident of Officer's Flat Quarter No. E/6, in Front Of State
Bank Of India, Rajbanshi Nagar, New Punaichak, Patna

.... Petitioners

Versus

1. The State Of Bihar through Mr. Ashok Kumar Sinha, the
Chief Secretary, Govt. of Bihar
2. Mr. Pratyay Amrit, Secretary, Road Construction
Department, Bihar, Patna
3. Mr. Baban Ram, the Engineer-in-Chief, Road Construction
Department, Bihar, Patna
4. Mr. Chandra Shekhar Prasad, the Deputy Secretary, Road
Construction Department, Bihar, Patna

..... Opposite Parties

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Appearance :

For the Petitioners : M/s Vinod Kanth, Sr. Advocate &
Prabhu Nath Pathak

For the State : M/s.A.B.Sinha, SC 19 and
Neeraj Raj, AC to SC 19

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

20 11-03-2015

I have heard the parties.

This petition has been filed for initiation of
contempt proceeding against the opposite parties for non
compliance of order dated 21.06.2013 passed in C.W.J.C. No.
16899 of 2012.

Vide aforesaid order the Secretary Road

Construction Department, Bihar was directed to dispose of the representation in accordance with law and take a decision regarding grant of A.C.P. to the petitioners also keeping in view the A.C.P. Rules 2003 as well as the modified Rules of 2010.

It was submitted earlier that no decision could be taken by the opposite parties concerned compelling the petitioners to file this application.

In the aforementioned background the State Government was directed on 22.01.2014 to file affidavit for showing compliance of the order passed in the writ petition which was extended time to time upon the prayer made by the opposite parties. The stand was taken by the Department that the petitioners and other similarly situated persons were initially appointed as Assistant Engineer on ad hoc basis vide departmental notification No. 2481(S), dated 27.6.1987. However, their regular appointment on adjustment basis was done vide departmental notification No. 3535(s) dated 28.3.2012. Finally Annexure A came to be issued by the Road Construction Department which is a communication dated 12.02.2014 by the Deputy Secretary, road Construction Department addressed to the petitioner no. 1 informing him that, for grant of such A.C.P., minimum two years of confirmed / regularized service is

mandatory. Since services were to be confirmed only on 28.3.2012, thus, such benefit could only be granted to the petitioners after 27.3.2014.

In view of the aforesaid stand of the department the matter was directed to be posted on 2.4.2014 expecting that the authority concerned would pass necessary order immediately after 27.3.2014, i.e., cut of date, disclosed in Annexure A aforesaid. However since the decision was not being taken even after such date, displeasure was shown by this Court in the order dated 2.4.2014. The matter was again adjourned in view of the fact that the concerned officials were busy with the ensuing Parliamentary Election. Thereafter, as would appear from the order dated 23.7.2014, a peculiar stand was taken by the State – opposite parties intimating that so far the petitioner nos. 1 and 2 are concerned decision has been taken to grant them benefit of 1st and 2nd A.C.P. and this complies the direction of the Court as no further direction was given for payment of monetary benefit accruing on grant of such benefit, meaning thereby that even after grant of A.C.P, the monetary benefit would not be given until the petitioners again approach the authorities for grant of the same. So far the petitioner no. 3 is concerned there was again a change in the stand by stating that he could not be granted benefit even



after the aforesaid cut of date, i.e., 27.3.2014 in view of the fact that a vigilance case was pending, whereas, the claim of the petitioner no. 3 was that pendency of such case would not affect the grant of benefit. In view of the changed stand the Principal Secretary concerned was directed to file further affidavit to explain the matter. Then there was again a change in the stand, which would appear from the order dated 5.11.2014, that the petitioners are not entitled for A.C.P. rather they are entitled for M.A.C.P. and notification to that effect has already been issued. In view of the stand of the Finance Department again a supplementary show cause affidavit has been filed on behalf of the opposite party nos. 2 to 4 on 11.2.2015 stating that M.A.C.P. has now been sanctioned with respect to seven persons including petitioner nos. 1 and 2. The notification dated 28.1.2015 to that effect has brought as Annexure F to the aforesaid affidavit.

Mr. Vinod Kanth, learned senior counsel appearing for the petitioners has submitted that the petitioners along with others were initially appointed on the post of Junior Engineer in 1981 and, thereafter, appointed as Ad hoc Assistant Engineer by the Road Construction Department. They continued in service without any breakage. They were granted annual increment etc.



However, services of the petitioners came to be regularized along with other similarly situated persons by way of absorption on 28.3.2012 with pay protection. Some of the similarly situated persons' services were taken in the State of Jharkhand after reorganization of the State of Bihar in terms of Section 72 of Bihar Re-organization Act 2000, however, State of Jharkhand unilaterally decided that the services of such Assistant Engineers would returned back to the State of Bihar which was challenged by filing writ application but the same was dismissed on 22.3.2010. L.P.A. No. 256 of 2011 was preferred by them assailing the order of the learned Single Judge, however, in the meantime their services were terminated by the State of Jharkhand. The aforesaid L.P.A. was allowed by the Division Bench of Jharkhand High court with direction to regularize the appellants with all consequential benefits upon which S.L.P. No. 266 of 2012 was filed by the State of Jharkhand which was dismissed by the Apex Court.

It is submitted that these petitioners are also entitled for similar treatment which has eventually been granted to the similarly situated persons by the State of Jharkhand as there is no difference in their service career except that the petitioners remained in the State of Bihar whereas those

Assistant Engineers were taken in the State of Jharkhand.

So far petitioner no. 3 is concerned it is submitted that he has not been given the benefit of ACP on the ground that his services have not been confirmed in view of the pending Vigilance Case No. 116/09. It is contended that the vigilance case was registered much after the due date for grant of ACP, therefore, in view of the settled principle that cannot be denied.

In my considered opinion such issue cannot be decided in the present proceeding. In view of the stand taken by the opposite parties who have come up with a notification as contained in Annexure F appended with supplementary show cause filed on 11.2.2015 showing substantial compliance of the order dated 21.6.2013 passed by this Court in C.W.J.C. No. 16899 of 2012, this proceeding cannot continue and is, accordingly, dropped.

However, petitioner nos. 1 and 2 in case they are still not satisfied and if so advised, would be at liberty to approach the competent forum for deciding such issues.

Similarly, in view of the stand taken by the State authorities, the contentious issue with respect to the petitioner no. 3 also cannot be decided in a contempt proceeding, thus, petitioner no. 3 would be at liberty to assail the same before a

competent forum.

However before parting with the issue, I must record that the manner and way in which the opposite parties have taken up this matter and continuously been changing their stand during the proceeding and the long period that has been consumed unnecessarily for coming to a final decision, has displeased this Court.

(Dr. Ravi Ranjan, J)

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