

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13611 of 2015

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Khalid Wali Chaudhary @ Khalid Chaudhary, son of Md. Chaudhary,
resident of Mohalla Bara Pathar, P.O. and P.S. Dehri, District Rohtas at
Sasaram

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Personnel and Administrative Reforms
Department, Govt. of Bihar, Patna
3. The Deputy Secretary, Personnel and Administrative Reforms
Department, Govt. of Bihar, Patna
4. The Project Director, Bihar Educational Project Parishad cum Secretary,
Bihar, Patna
5. The Principal Secretary, Bisheswaraiya Bhawan, Bailey Road, Patna
6. The Engineer-in-Chief cum Additional Secretary- cum- Special
Secretary, Road Construction Department, Govt. of Bihar,
Vishweswaraiya Bhawan, Bailey Road, Patna
7. The Deputy Secretary Road Construction Department, Govt. of Bihar,
Bishweswariya Bhawan, Bailey Road, Patna
8. The Superintending Engineer, Road Construction Department, Bhojpur
Road Division, Ara
9. The Executive Engineer, Road Construction Department, Road
Division, Dehri on sone, District Rohtas at Sasaram

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar No. 1

For the Respondent/s : Mr. Aag4- J.P. Karn

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 01-09-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as
follows:

“That by the present writ petition, the poor and helpless
petitioner craves indulgence to dispose of this case in terms
of the orders dated 2.12.2010 passed in CWJC No.
7772/2006 (Prem Prakash Singh and others vs. the State of
Bihar and others) and the order dated 25.7.2007 passed in
CWJC No. 11776/2006 (Sanjay Kumar and others vs. the



State of Bihar and others) because the case of this petitioner is exactly similar to the cases of petitioners of aforementioned two cases. Not only this case of the present petitioner stands on better footing because petitioner of CWJC No. 7772/2006 (Prem Prakash Singh and Amod Bihari had worked for only 9 months only whereas this petitioner has worked in the department regularly on the sanctioned vacant post of Chaukidar from 15.1.1993 to 15.3.1995. Hence as per fundamental rights granted under Articles 14, 15 and 16 of the Constitution of India, this petitioner is legally entitled to get the same reliefs as it has been provided to the petitioners of CWJC No. 7772/2006 and CWJC No. 11776/2006 who are presently working in the department in compliance of the orders passed in the aforesaid two writ petitions.”

Learned counsel for the petitioner submits that the petitioner was initially engaged on daily wages and subsequently his appointment was made by an order dated 19.6.1995 in the prescribed pay scale on the post of Mechanical Assistant but then the respondents stopped taking work from the petitioner almost after one year of such appointment, whereafter the petitioner had moved this Court by filing a writ petition in the year 2006, C.W.J.C.No. 10496/2006 which was disposed of by an order dated 22nd January, 2007 without giving any relief to the petitioner and only giving liberty to the petitioner to move the department against his grievance of removal from service in the year 1997.

The department thereafter had passed an order again reiterating removal of the petitioner, whereafter the petitioner had moved this Court in C.W.J.C.No. 5107/2010 which again was not entertained by this Court by making the following observation:

“ After some argument, leave is sought to withdraw the application to pursue departmental remedies.

This Court makes no observation with regard to the same.

The application is dismissed as withdrawn.

The present order shall not inhibit the respondents from considering matters in their wisdom but any such consideration has to be strictly in accordance with law only.”

Learned counsel for the petitioner submits that after this order two writ petitions were disposed of, one being C.W.J.C.No. 11776/2006 disposed of on 25.7.2007 and the other being C.W.J.C.No. 7772/2006 disposed of on 2.12.2010, wherein similarly situated persons have been given relief by this Court.

In the considered opinion of this Court when the second writ petition of the petitioner was allowed to be withdrawn by the petitioner without giving any leave to move this Court again, the matter between the petitioner and the respondent State came to be closed. By-now it is well settled that there cannot be any number of writ petitions if the liberty is not given to the petitioner to move

again while passing an order of withdrawal. As a matter of fact when this Court had made it clear that it would like to make no observation on the prayer of the petitioner to withdraw this application for pursuing the departmental remedy, it was made clear to the petitioner that this Court was not inclined to interfere in the matter of termination of service of the year 1996.

That apart this Court would find that if the appointment of the petitioner either on daily wages or in the pay scale was made de hors the rule, particularly the mandate of Articles 14 and 16 of the Constitution of India, such appointment of the petitioner had conferred him no right. Therefore, this Court will not now go into the other judgments, especially when the issue between the petitioner and the State has already become final.

That being so, this application is wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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