

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15738 of 2006

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Brij Bala Sharma, son of Ram Chandra Singh, resident
of village Jamuyawan, P.S. Khizarsarai, District
Gaya.

.... **Petitioner**

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Public Health
Engineering Department, Bihar, Patna.
3. The Engineer-in-Chief, Department of Public
Health Engineering, Bihar, Patna.
4. The Chief Engineer, (Mechanical), Department of
Public Health Engineering, Bihar, Patna.
5. The Superintending Engineer, Public Health
Engineering Department, Gaya.
6. The Executive Engineer, Public Health
Engineering Department, Gaya.

.... **Respondents**

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Appearance :

For the Petitioner/s: Mr. Sanjay Kumar

For the Respondent/s: A.C. to G.P.-12

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV ORDER

11 22-06-2015

The petitioner, invoking writ
jurisdiction of this Court under Article 226 of
the Constitution of India, has prayed for
issuance of a writ in the nature of mandamus
commanding the respondents to appoint the
petitioner against the post of Work Sarkar or
any suitable post equivalent to the post of Work
Sarkar.

It is the case of the petitioner that
he was initially appointed, as daily-wages
employee, under the order of Executive Engineer,
Public Health Engineering Department (for short



"P.H.E.D."), Gaya Division on 15-04-1980, however, on 31-12-1980, the work of the petitioner was terminated. However, after filing appeal before the respondents authorities, the petitioner was again directed to join, as daily-wager in the P.H.E.D., Aurangabad on 09-04-1984. The petitioner, thereafter filed a writ petition, vide C.W.J.C. No. 2435 of 1988 for regularization of his service against the post of Work Sarkar, however; on advice of the respondent/State, the petitioner withdrew the said writ petition on assurance that his grievance would be redressed. Subsequently, by office order no. 2 dated 05-01-1990, the petitioner was appointed in the work charge establishment from daily-wager, as Work Inspector. Thereafter, on 06-02-1990, learned counsel for the petitioner withdrew the writ petition i.e. C.W.J.C. No. 2435 of 1988 and as such, same was dismissed as withdrawn. Thereafter, the petitioner continued to discharge his duties, however; from the month of March, 2001, his salary was stopped. After interference by the superior authorities, vide

order dated 29-01-2002, sanction order was issued for payment of the salary, which was withheld earlier. The petitioner has accepted in the writ petition that the due salary has already been paid.

It is further case of the petitioner that vide Memo No. 2322 dated 13-04-2002, issued by the Commissioner-cum-Secretary, Department of Public Health Engineering, Bihar, Patna, the service of the petitioner has been reverted from regular appointment to daily wages employee with effect from the date of issuance of the said order. The petitioner claims that earlier, he was appointed as daily-wager on 15-04-1980 and subsequently, on 05-01-1990, he was regularly appointed, as Work Sarkar, in the work charge establishment, but all of a sudden, after completing 12 years of regular service, the petitioner was illegally reverted, as daily-wager. After the issuance of letter dated 13-04-2002, whereby, the petitioner was reverted, the petitioner filed a writ petition, vide C.W.J.C. No. 6075 of 2002 for quashing of the letter dated 13-04-2002. This Court, as per



the petitioner, vide order dated 16-05-2002, stayed the operation of order of reversion. However, the said writ petition alongwith other similarly situated writ petitions were thereafter directed to be placed before the Division Bench and the Division Bench of this Court by order dated 13-07-2006, remanded back the matter to the authority concerned with a direction to examine the cases of the petitioners in accordance with law as well as law settled by the Apex Court. In the writ petition, it has been accepted that after the matter was remanded back, the authority concerned examined the cases of 50 writ petitioners, including the case of petitioner, however; the authority directed that the petitioner may join against a Class IV post namely Khalasi-Keyman-cum-Chaukidar. The petitioner was earlier working as Work Sarkar in work charge establishment. According to the petitioner, it was a higher post than the post of Khalasi-Keyman-cum-Chaukidar.

Sri Sanjay Kumar, learned counsel for the petitioner submits that once the petitioner



was appointed in the work charged establishment and he was appointed as Work Sarkar, there was no reason to the concerned respondent to revert the petitioner from the post of Work Sarkar and as such, he made a prayer for directing the respondents to appoint the petitioner on the post of Work Sarkar or to any superior equivalent post.

In this case, learned A.C. to Govt. Pleader - 12 has vehemently opposed the prayer of the petitioner. At the very outset, it has been argued by the learned counsel for the State that appointment of the petitioner in work charge establishment was itself illegal and contrary to the instructions, issued by the State Government and as such, after noticing this illegality, vide **Annexure - 10** to the writ petition, show cause notice was issued to the petitioner asking him to explain as to why he be not reverted from work charge establishment to the daily wager. He submits that the said order was assailed by the petitioner by filing a writ petition, vide C.W.J.C. No. 6075 of 2002, which was finally remitted back to the authority



concerned with certain guidelines. After the case was remitted back, the case of the petitioner and others was examined in detail and thereafter, vide letter no. 1124 dated 28-11-2006, the petitioner alongwith others were recommended for being adjusted against the suitable post. He submits that since the appointment of the petitioner in the work charge establishment was itself illegal, the petitioner was rightly asked to show cause, vide **Annexure - 10** to the writ petition and finally, in terms of order of a Division Bench of this Court, the case of the petitioner was considered sympathetically and instead of terminating the services, the petitioner has been recommended for appropriate post.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the appointment of the petitioner in the work charge establishment was itself contrary to the Government instruction, however; the petitioner, vide **Annexure - 11** to the writ petition was recommended for being adjusted against

appropriate post instead of terminating the services of the petitioner. Moreover, in the present writ petition, no prayer has been made by the petitioner for quashing of any of the communication or order issued by the authority concerned, whereas, the petitioner has accepted in the writ petition that after the earlier writ petition, filed by the petitioner, which was referred to the Division Bench alongwith other writ petitions, was remitted back to the authority concerned and thereafter, the authority concerned has passed the order, the petitioner has not at all pleaded for quashing of any such order.

The Court is of the opinion that on the basis of vague prayer, made in the writ petition, no relief can be granted to the petitioner.

In the facts and circumstances, I do not find any ground to interfere with the order.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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