

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6299 of 2014

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1. Raj Kumar Yadav Son Of Sri Deo Narayan Yadav Resident Of Village - Dhobieh,
P.S. - Nirmali, District – Supaul Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Public Health Engineering
Department, Government Of Bihar, Nirman Bhawan Campus, Bailey Road, Patna
2. The Joint Secretary, Public Health Engineering Department Government Of Bihar,
Nirman Bhawan Campus, Bailey Road, Patna
3. The Engineer-In-Chief-Cum-Special Secretary, Public Health Engineering
Department, Nirman Bhawan Campus, Bailey Road, Patna
4. The Regional Chief Engineer, Public Health Engineering Department,
Muzaffarpur
5. The Executive Engineer, Public Health Engineering Division, Dhaka (East
Champaran)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramendra Nath Mukhopadhaya

For the Respondent/s : Mr. Lalan Kumar, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 25-04-2016

Petitioner decided to file the writ application when he felt discriminated by the respondent's decision not to regularize his service despite working in the work- charged establishment from the year 1991. The impugned orders are Annexure- 1, 1/1 and Annexure- 23, annexed with IA No.8943 of 2014. By virtue of the decisions in question, the petitioner's engagement as a Choukidar has been brought to an end with effect from 31.7.2014.

There is no dispute that the petitioner was engaged on 17.1.1991 by the Executive Engineer, Dhaka to work as a Choukidar. That engagement continued for quite some time. However, in between the petitioner was disengaged with similarly appointed



persons, some of the names are indicated in paragraph 3 of the writ application. When such decision was taken, the petitioner along with others moved the High Court. The High Court intervened and petitioner continued to discharge his duty on the basis of order passed in CWJC No.2262 of 1997. Again the same fate visited the petitioner and some others when CWJC No.5509 of 2002 was filed and interim protection was granted. Petitioner along with others was reinstated.

Subsequently the exercise for regularization was taken up by the respondent authorities. The respondents decided to regularize six of the persons, who were petitioners before the High Court earlier, but left out the name of the petitioner for such regularization on the ground that petitioner's engagement has been after 11.12.1990, the cut-off date.

Learned counsel for the petitioner submits that the reasons provided or given by the respondents in their counter affidavit is not only erroneous but even fallacious and misleading. They are trying to make a hyper distinction between the engagement or appointment of the petitioner vis-à-vis other similarly situated persons on various posts. Yet another distinction provided was that one of the person though appointed after the petitioner was engaged as a Jeep Driver, therefore, his case is different from that of the petitioner.

The Court has gone through the so-called letters of engagement and appointments of some of the other persons, who have



been regularized. Merely because the letters show that they were engaged in December, though the date of the letter is 31.12.1990, it does not make their case any better than that of the petitioner because this magic word is missing in the engagement letter of the petitioner. The Court is of the opinion that the word 'December' has been deliberately used to cover up the exact date of their engagement because no person can be engaged under the establishment of the State over a window of one month of December 1990 as the period of engagement.

Nor does the Court find that there is any distinguishing feature provided in the circular, which has been talked about in Annexure- 1/1 by the Principal Secretary, that a person engaged on work- charged establishment on a class III post is required to be treated differently from the one in class IV.

The issue is regularization of such persons by virtue of long stint of work and has nothing to do with the post on such engagements are made. The engagement of the petitioner and the others, who are regularized, have been done by the same authority in similar kind of time frame, may be with the difference of a month or two but the basic fact of their engagement and continuance since then cannot be a subject matter of dispute and the distinction sought to be drawn for conferring benefit of regularization on some and leaving out the case of the petitioner does not seem to be on cogent and for valid

reason.

It is also taken note of that merely because the petitioner continued by virtue of a judicial order that cannot work against him because it is the continuance whether by indulgence shown by the State or protection given by the Court, will make no difference. It is the length of service and continuance which brings such persons within the zone of consideration for regularization.

The State, therefore, cannot be permitted to discriminate on grounds, which are not germane to the basic issue of regularization. The Court opines that the case of the present petitioner and the background thereto is no different than some of the other persons, who have been conferred the benefit of regularization. Therefore, the impugned orders contained in Annexure-1, dated 18.2.2014 and Annexure- 23, dated 31.7.2014 are hereby quashed. The respondent authorities are directed to reconsider the claim of the petitioner for regularization in the work- charged establishment under the respondents within a period of three months from the date of production of a copy of this order.

Writ is allowed.

(Ajay Kumar Tripathi, J)

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