

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3331 of 2013

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1. Ashok Kumar Sharma S/O Vidyanand Sharma R/O Vill-Dighara, P.S.-Pusha,
Distt-Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Public Health Engineering Department, Vishweshariya Bhawan , Patna
2. The Engineer In Chief, Public Health Engineering Department, Vishwasharaiya Bhawan, Patna
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Vishwaraiya Bhawan, Patna
4. The Superintending Engineer, P.H.Circle, Darbhanga
5. The Executive Engineer, P.H.Division, Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S. Gajendra Kumar Jha, Surya Kant Mishra &
Sushil Kumar Jha

For the Respondent/s : Mr. Kumar Vikram, A.C. to G.A. 11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-01-2016

Heard learned counsel for the petitioner and
learned counsel for the State.

In this writ application the petitioner is claiming
that he has been adversely regularized in service from work charge
establishment as before regularization he was discharging the duty of
Work Sarkar in the pay scale of Rs.3200-4900 and after regularization
instead of making him as Work Sarkar fitting in appropriate scale, he
has been regularized on the post of Khalasi in the pay scale of
Rs.2550-3200.



Short facts of the case is that the petitioner was appointed on daily wage basis for the period 1981 to 04.02.1988 and thereafter on 05.02.1988 he was brought in work charge establishment and was asked to perform duty of Work Sarkar. He continued for a long period but on 13.04.2002 a show cause notice was served on him and similarly situated persons asking him as to why they should not be reverted back again as a daily wager. Against that show cause, petitioner and others moved before this Court in C.W.J.C. No. 6494 of 2002 and this Court vide order dated 23.05.2002 granted interim relief prohibiting the authority to take coercive steps against the petitioner and others and finally the case was disposed of by order dated 13.07.2006 in terms of the case of **State of Karnataka Vs. Uma Devi reported in (2006) 4 SCC 1** and directed a three men Committee to constitute and to examine the case of the petitioner and other similarly situated persons. Case of the petitioner and others were examined and, accordingly, by order dated 20.12.2006 the services of the petitioner has been regularised as Khalasi in the pay scale of Rs.2550-3200.

Learned counsel for the petitioner submits that regularization of the petitioner is de hors the own order of the State Government dated 17.10.2013 contained in annexure-5 which provides that whatever post the person was discharging before



regularization, he should be accommodated in the same post if it is available and if that post is not available, automatically that post will be converted into a regular post and the same post will be treated to be the post of regular establishment and the said post will continue till superannuation of the petitioner or the date of death which ever is earlier. Learned counsel for the petitioner submits that at the time of regularization, the petitioner was getting Rs.4400/- whereas his pay scale has been fixed at Rs.2550/- and so much so, his pay cannot be reduced to his prejudice, at-least he is required to be given pay protection as he has been regularized on much lower scale than that he was getting but in terms of the said Circular if the posts are available, he would be accommodated on the said post and if the same is not available, the same post will be treated in the regular establishment till he is regularized but neither of the thing has been done by the authority concerned but he has been put to peril.

Learned counsel for the State has tried to justify the action and submitted that the petitioner was not in regular establishment. On the basis of three men Committee he was regularized in service. Now, he raises a grievance that his pay has been revised.

Having considered the contention of the parties, it is a fact that the petitioner was working in work charge establishment

as Work Sarkar. In terms of the circular or general law, his pay cannot be reduced what he was getting at the time of work charge establishment and so much so the Circular itself indicates that the person would be regularized on whatever post, that he was holding at the time of regularization. If that post is available, he would be accommodated on that post and in case the said post is not available, the post which he was holding would be converted into a regular post and the same will continue till his superannuation.

In such view of the matter, the Principal Secretary of Public Health Engineering Department, Government of Bihar, Patna is directed to look into the matter and redress the grievance of the petitioner as is apparently clear from the facts stated above within a period of six months from the date of receipt/production of a copy of this order.

With the observation/direction, this writ application is disposed of.

(Shivaji Pandey, J)

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