

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.7777 of 2013**

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Mohammadin Ansari Son of Late Syed Hussain resident of village - Mukundpur, P.S. Taraiya Sujan District Kushinagar ( U.P. ) at present working as Roadmate - Cum - Chowkidar, Rural Works Department, Works Division, Sheohar, District – Sheohar.

.... .... Petitioner/s

Versus

1. The State of Bihar, through Secretary, Rural Works Department, Bihar, Patna
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna
3. The Chief Engineer, R.E.O. II, Road Construction (Works) Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Circle, Muzaffarpur District – Muzaffarpur.
5. The Executive Engineer, Rural Works Department, Works Division Sheohar District Sheohar.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Durganand Jha, Adv.

For the Respondent/s : Mr. Krishna Kumar Singh, AC to GP-22

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 10-08-2016**

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

In this case, the petitioner is seeking regularization of his service on the ground that since long, he is working on the work charge establishment.

The brief fact of this writ petition that the petitioner entered into the service as a daily wages employee in the year 1981, after about one year, he was retrenched from service. Later on, vide Memo No. 3926 dated 12.12.1984, he was brought to service

as daily rate- basis and since 13.03.1985 he continued to discharge duty without any break.

In the year 1986, the Executive Engineer of Works Division Sitamarhi, vide Memo No. 71 dated 06.10.1986, brought seven daily wages employees in work charge establishment in the regular pay.

The Superintending Engineer, vide Memo No. 1829 dated 30.12.1987, called for details of the daily rated employees working at that time and accordingly, the Executive Engineer, vide letter No. 85 dated 08.02.1988, furnished the list of daily wages employee with full details including the petitioner, but no order for regularisation of service, was passed in favour of the petitioner. Thereafter the petitioner along with one Md. Atique Ahmad moved before this Court in C.W.J.C. No. 4103 of 1993 with a prayer for regularisation of service on the post, he had been working since 13.03.1985. The said writ petition was disposed of by a Division Bench of this Court, vide order dated 16.02.1984, directed for payment of minimum pay scale meant for Road Chaukidar and Godown Chaukidar or equivalent posts. Thereafter, the case of the petitioner along with others was placed before the Establishment Committee and the Committee in pursuance of the Government policy decision contained in Memo no. 5940 dated 18.06.1993, decided to



regularise the services of the petitioner and others and accordingly, the S.E., Works Circle, Muzaffarpur, vide Office Order contained in Memo. No. 784 dated 16.10.1996, absorbed the petitioner in the regular pay scale but in the work charge establishment instead of regular establishment

As per the claim of the petitioner, he ought to have been regularised in the regular establishment, but instead of regular establishment, he was absorbed in the work charge establishment in a ridiculous manner, but that absorption was subsequently cancelled by the Superintending Engineer, vide Memo No. 655 dated 24.06.2000 in consequence thereof the petitioner and seven others were reverted to daily wages employees that compelled the petitioner and others to approach this Court in C.W.J.C. No.3211 of 2004 which was allowed, vide 25.05.2006, along with the other writ application, the State Govt. challenged the order before the Division Bench in L.P.A. unsuccessfully. Thereafter, the State unsuccessfully filed S.L.P. before the Hon'ble Supreme Court and ultimately the view taken by the single Judge was upheld upto the Hon'ble Apex Court. It was prudent for the Superintending Engineer to regularise the services of the petitioner, but instead thereof, vide order in Memo No. 132 dated 29.01.2009, allowed the petitioner and two others to continue again in the work charge establishment with effect from 10.06.1996 in the

replacement pay scale of Rs. 2550-3200/- and accordingly, the pay of the petitioner was fixed by the competent authority.

In the present case, the petitioner submits that first he was appointed as daily wages employee in 1981, later on, he was regularised and working in the work charge establishment for a long period and thereafter, he was reverted as daily wages employee, but the action of the State was set at naught. He has further submitted that the action of the respondent-authority is completely mala fide and arbitrary with a view to deprive the petitioner of his legal right as per admissible in law and wants to continue him as work charge employee prejudicial to the interest of the petitioner.

The counsel for the respondent submits that the petitioner has not been regularised on account of the fact that he did not satisfy the condition as has been mentioned in the Notification whereby the cut off date for consideration of regularisation has been fixed i.e. 11.12.1990. He further submits that the petitioner entered into the service admittedly after 11.12.1990 is completely factually incorrect on the following reasons, that first he entered into the service as daily wages employee in the year 1981, brought as a work charge employee, regularisation was done, again he was sent back to the daily wages employee, but on the intervention of this Court which was upheld to the Hon'ble Apex Court, the respondent-authority was

compelled to bring the petitioner on the work charge establishment, but the question is that the ground that has been assigned in the counter affidavit, completely dehors to the fact as early as the petitioner entered into service in the year 1981, was brought to the work charge establishment in the year 1985 so the plea that has been taken by the State, is factually wrong.

The counsel for the petitioner has placed reliance on the order passed by this Court in C.W.J.C. No. 4517 of 2007 there the person has worked before the cut off date and the Court after considering the Resolution taken by the State Government from time to time, directed for regularisation of service placing reliance earlier view taken by the Court.

The respondent-authority is directed to consider the case of the petitioner for regularisation in the regular establishment looking to the period of his entry in the service and pass the order within three months from the date of receipt/production of a copy of this order.

Accordingly this petition is allowed.

**(Shivaji Pandey, J)**

Mahesh/-

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