

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1552 of 2013

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Digranjan Kumar Son Of Late Nardhip Thakur Resident Of Village Lakhanpur,
P.S. Punpun District Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Water Resources Department, Bihar, Sinchai Bhawan, Patna
2. The Deputy Secretary, Finance Department, Govt. Of Bihar, Main Secretariat, Patna
3. The Chief Engineer-Mechanical, Water Resources Department, Old Secretariat Barrack, Patna
4. The Superintending Engineer, Irrigation Mechanical Circle, Birpur, District-Supaul
5. The Executive Engineer, Irrigation Mechanical Division, Birpur, District-Supaul
6. The Accountant General, Bihar, Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.N. Mukhopadhyay
Mr. Vishwanath Ram

For the Respondent/s : Mr. Binay Kriti Singh SC-5
For the Respondent No.6 Mr. L.P.K. Rajgrihar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-01-2016

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

In the present case, the petitioner is challenging the order dated 04.09.2012, passed by the Chief Engineer, Mechanical, Water Resources Department, Government of Bihar, whereby and whereunder, he has refused to regularize the service of the petitioner in the regular establishment.

For the disposal of this case certain necessary facts are to be taken into consideration. It appears that the petitioner was appointed on 22.11.1957 as Engine Driver in the pay scale of Rs. 110-140 in the work charge establishment. The position of the petitioner was improved by making him Shift In-charge, work charge establishment on 18.08.1963. The petitioner remained as Shift In-charge, work charge establishment, but on the same date, he had gone for leave for a period from 22.03.1967 to 31.03.1967 for nine days but he remained absent unauthorizedly upto 18.06.1986. On 19.6.1986, the petitioner joined his service but his joining was accepted on 08.01.1991 on the work charge establishment. Later on, the petitioner superannuated from service on 31.12.1993.

In the present case, the question of payment of salary is not under consideration but the limited issue has been raised about refusal to bring him in regular establishment in view of the letter



issued vide memo No.1344 dated 04.02.1949, in which, it has been averred that the person who has worked in work charge establishment in temporary or permanent establishment as a daily labour and if the post in work charge establishment is permanent in nature and that is required for 12 months in a year and for long and indefinite period will be made permanent and the person employed on these posts having one year approved service will be included amongst the permanent Government employees. As it appears that after superannuation on the basis of the order passed by the Superintending Engineer, the Executive Engineer vide order dated 23.07.1999 regularized the service of the petitioner and the petitioner claimed the pension on the basis of regularization of his service on the basis of order passed by Executive Engineer. When on the objection of Accountant General, the petitioner was not given any pensionary benefit, he moved before this Court in C.W.J.C. No. 10356 of 2001, which was dismissed vide order dated 03.10.2010, in which, the Court has said that the petitioner fraudulently with the connivance of the Superintendent Engineer got order of regularization of the service. That order was challenged in LPA No. 757 of 2010, which was disposed of vide order dated 22.04.2011, in which, the Court has said that the appellant is not entitled for sanction of pension and any other retrial benefits for the period he has not worked in the department.

Therefore, the Court directed the Chief Engineer-respondent No. 3 to consider the case of the appellant and pass fresh order for sanction of pension and other retrial benefits, if he is eligible as per the pension Rules, after verifying the records.

Thereafter, the matter was placed before the Chief Engineer, who vide order dated 23.08.2011 (as Annexure-12) rejected the claim of the petitioner for any pensionary benefit, which was challenged before this Court in CWJC No. 4801 of 2012 (Annexure-13) and learned Single Judge vide order dated 06.04.2012 set aside the order dated 23.08.2011 passed by the Chief Engineer and again remanded back the matter for fresh consideration. In pursuance thereof, the Chief Engineer, Mechanical, Water Resources Department, considered the case of the petitioner and by the impugned order dated 04.09.2012 rejected the claim of the petitioner with regard to his regularization of service as well set aside the order passed by the Superintending Engineer vide letter No.228 dated 02.05.1999 and the order passed by the Executive Engineer vide letter No.534 dated 23.07.1999. At the same time, it has been decided that as the petitioner does not qualify the conditions mentioned in letter No.1661 dated 28.08.1981 he cannot be brought in the regular establishment.



Primarily, the question is that the petitioner has worked only from the year 1957 to 1967 and thereafter for the first time he emerged and joined the service on 19.6.1986 and on 31.12.1993, he superannuated from service but his joining was accepted on 08.01.1991 in the work charge establishment. Here is the question whether he can be given the benefit of regularization of service for the purposes of pensionary benefit or not?.

So far the Circular of 1949 is concerned, which has been adopted by the Government of Bihar vide Gazette Notification dated 26th April, 1950, which says that all enactments and the rules whether made under any enactment or otherwise which regulated the recruitment and conditions of the appointment to public service and post in connection with the affair which are now the affair of the state of Bihar which were enforced before 1950 shall until provision is made by or under the act of State Legislature to regulate such recruitment and condition of service, be enforced as if they have been made by virtue of power under the said proviso. This adoption order was passed in terms of the Article 372 of the Constitution of India, so the status of this letter will not change. It remains as a circular issued by the Government of Bihar for the purposes of bringing the person in the regular



establishment. It is not in dispute that in terms of Rule 58 of the Bihar Pension Rules, a person to be entitled to pension, he must satisfy three conditions namely, (i) the service must be under the Government (ii) the employment must be substantive and permanent and (iii) the service must be paid by the Government. The petitioner does not qualify the condition No.2 with regard to his appointment in a substantive and permanent post as the petitioner all through remained on this work charge establishment. It is not that the State of Bihar from time to time considered the case of large number of persons, who were brought under the regular establishment. The period was extended from time to time for consideration. The case of the petitioner was considered in terms of letter dated 20.08.1981, where the criteria was fixed, if an employee who has performed the duty satisfactorily for five years on the work charge establishment before 01.04.1977 (Annexure-7) would be brought in the regular establishment. Admittedly, the petitioner was remained unauthorizedly absent for five years preceding 01.04.1977. It is not the case of the petitioner that his case was not considered by the Chief Engineer but his action itself deserves that he could not be brought in the regular establishment as he was not sincere toward his duty, remained unauthorizedly absent without any cause and reason.

This Court in exercise of discretionary jurisdiction refuses to pass order to declare him entitled to be brought him in regular establishment and hold him entitled to pensionary benefits, as he all through remained absent except he had worked for 10 years in work charge establishment.

This Court does not find any error in the impugned order passed by the Chief Engineer, Mechanical, Water Resources Department.

Accordingly, this writ petition is dismissed.

(Shivaji Pandey, J)

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