

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15912 of 2013

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Dinesh Kumar, son of Sri Sharangdhar Kumar, Resident of Village Khagara, P.S. Naugachhia, Dist. Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, P.W.D. (Building), Government of Bihar, Patna.
3. The Chief Engineer, P.W.D. (North) Building Department, Government of Bihar, Patna.
4. The Principal Secretary, P.H.E.D., Government of Bihar, Patna.
5. The Executive Engineer, P.H.E.D., Sub-Division, Bhagalpur.
6. The Assistant Engineer, P.H.E.D., Sub-Division, Bhagalpur.
7. The Junior Engineer, P.H.E.D. (Mechanical) Kutchari Compound, Naugachhia, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Ravi Shankar, Adv.
For the Respondent/s : Ms. Smriti Singh, AC to AAG-10
Mr. Ajay Kr. Rastogi, AAG-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-12-2016

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

In this case, the petitioner is challenging the Memo No.
3/Muk0 1019/07 543 Patna, dated 15.5.2012, whereby and
whereunder, the Principal Secretary, Department of P.H.E.D.,
Government of Bihar, Patna held that the petitioner will not be treated
in the Work Charge Establishment and will not be entitled to the
difference of salary for the period from 13.4.2002 to 30.11.2006.

In the present case, the petitioner was engaged on daily
wages as Pump Operator, P.W.D. (Building) in the office of



Executive Engineer, Purnea and he was given duty of Pump Operator Sub-Division, P.W.D. Building, Naugachhia Kutahary Compound on 1.4.1979. He filed an application to the Chief Engineer Building, P.W.D. for adjustment of his service in Work Charge Establishment on 25.3.1983 and his application was recommended by Executive Engineer, P.W.D. Building Division, Bhagalpur vide letter no. 1482 dated 14.5.1983 to the Chief Engineer Building, P.W.D., Bihar, Patna. Again an application was filed by him with the recommendation by the S.D.O. which, vide letter no. 25 dated 13.1.1984, was sent to the Chief Engineer for needful. In pursuance to the direction of the Chief Engineer, P.W.D. and Superintending Engineer, vide letter dated 15.5.1986, the petitioner was brought to the Work Charge Establishment on the pay-scale of Rs. 375-460/-. The petitioner filed an application for regularization in service to the Chief Engineer, P.W.D., North Bihar, Patna. A letter was issued by the Joint Secretary, P.W.D. with respect to regularization of service suggested for regularization of service of those persons who had completed five years of service satisfactorily in the Work Charge Establishment so that the work load of Work Charge Establishment be reduced. Similarly a letter was written by the Commissioner-cum-Secretary, P.W.D. vide letter dated 8.10.2001 with respect to regularization of service of persons who were working for five years on the post of



Work Charge Establishment. While working as a Work Charge Employee, the petitioner received show-cause notice vide letter no. 2322 dated 12.4.2002, showing his appointment illegal. Against that, the petitioner filed a representation before the Commissioner, Secretary and raised objection the manner he was being treated, wrongly regulated as muster roll employee. When the petitioner did not receive any fruitful result, approach this Court in CWJC No. 13846 of 2008 challenging his demotion from Work Charge Establishment to Daily Wager. This Court passed an order giving direction to the Principal Secretary of the Public Health Engineering Department that his representation pending before him should be disposed of. While the matter was pending before the Principal Secretary, the services of the petitioner was regularized in pursuance of the recommendation of the Three Men Committee which was constituted on the direction of this Court and the services of the petitioner along with others have been regularized vide office order no. 138 dated 30.11.2006. The only question remains now is with regard to entitlement of salary for the period 13.4.2002 to 30.11.2006 which has been rejected by the Principal Secretary vide Memo No. 543 dated 15.5.2012.

The petitioner has already retired from service. The only question is as to how the period will be treated as in Work Charge



Establishment or will be treated as Daily Wager. As the Department has treated the period as Daily Wager in similar matter one Yogendra Prasad Asthana had approached this Court in CWJC No. 7211 of 2013 and this Court considered the facts and circumstances similar to the present case and held that the period will be treated as a Work Charge Establishment and petitioner will be entitled for salary. In pursuance thereof, the Government issued notification no. 925 dated 16.11.2013, considered that those who have been reverted from Work Charge Establishment to Daily Wager and later on the persons has been regularized, the period they served as a daily wager for holding the post of Work Charge will be treated to be period of Work Charge Establishment and benefit will be given accordingly. In one matter also I myself in the case of CWJC No. 14377 of 2013 considered the same issue with regard to how the period will be treated and I myself placing reliance on the judgment and circular of the State Government had held that the period will be treated as Work Charge Establishment and, accordingly, will get the benefit.

Accordingly, the order of the Principal Secretary as contained in Memo No. 3/Muk0 1019/07 543 Patna dated 15.5.2012 is set aside and the period the petitioner had spent as Daily Wager from 13.4.2002 to 30.11.2006 will be treated as a period for Work Charge Establishment for the purpose of pension and A.C.P. and the



petitioner will not be entitled for any arrear of salary for the aforesaid period.

With the aforementioned observation and direction, this application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2017
Transmission Date	

