IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16285 of 2014

==

1. Ganga Prasad Singh son of Late Bhuneshwar Singh, resident of village - Sultanpur, P.S. Mohiuddin Nagar, District - Samastipur
2. Ramjee Ojha son of Late Brij Bihari Ojha, resident of village - Virampur, P.S. Koilwar, District - Bhojpur
3. Raj Kishore Singh son of Late Kauleshwar Singh, resident of village - Tulsi Tola, P.S. Piro, District - Bhojpur
4. Kuleshwar Singh son of Late Narsingh Narayan Singh, resident of village - Mokhtarpur, P.S. Mahnar, District - Vaishali
5. Ravi Shankar Lal son of Late Kamla Lal, resident of village - Vadhaur Narayanpur, P.S. Piro, District - Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The Chief Engineer, N.H. Way Road Construction Department Govt. of Bihar, Patna
3. The Secretary, Road Construction Department, Govt. of Bihar, Patna
4. The Principal Secretary, Rural and Engineering Department, Govt. of Bihar, Patna
5. The Principal Secretary, Public Works Department, Govt. of Bihar, Patna
6. The Principal Secretary, Building Construction Department, Govt. of Bihar, Patna
7. The Principal Secretary, Finance Department, Govt. of Bihar, Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Md. Anisur Rahman

For the Respondent/s : Mr. SHEO SHANKAR PD., SC 10
Mr. Anil Kumar, AC to SC 10

==

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 29-01-2016

Heard counsel for the petitioners and counsel for the State.

2. The status of the work charged employees has already been settled not only by the Apex Court but even by the Full Bench of this Court rendered in the case of **Durganand Jha and others vs. State of Bihar and others** way back on 28.09.2007. The said decision is reported in **2007 (4) PLJR 259.**

3. The Court would like to reproduce the status of such work charged employees of what has been opined by the Full Bench also taking into consideration the declaration of law by the Hon`ble Apex Court. The relevant paragraphs are 17 to 21.

> **17. The entity and status of the Work Charged Establishment was considered by the Apex Court firstly in Jaswant Singh vs. Union of India and others (AIR 1980 Supreme Court, 115) and again in case of State of Rajasthan v. Kunji Raman (AIR 1997(2) Supreme Court, 693), it was observed:**
>
> > **"A work-charged establishment as pointed out by this Court in Jaswant Singh v. Union of India (1997) 4 SCC, 440: (AIR 1980 SC, 115) broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment……. So far as employees engaged on work-charged establishments are concerned not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment**

> **and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes or employees. "**

18. The Apex Court, thus, held that a Work Charged Establishment broadly means an establishment of which the expenses including the wages and allowances of the staff are chargeable to works. The pay and allowances of employees who are borne on Work Charge Establishment, are generally shown as a separate sub-head of the estimated costs of the works. The Work Charged employees are engaged on a temporary basis and their appointments are made for execution of specified work. Their services automatically, therefore, come to an end on completion of the work for the sole purpose of which they are employed. A Work Charged Establishment, thus, differs from a regular establishment, which is permanent in nature.

19. So far as employees engaged on Work Charged Establishment are concerned, not only their recruitment and service condition, but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. Regular Establishment and Work Charged Establishment are two separate types of establishments and the persons

employed on those establishments, thus, form two separate distinct classes, and therefore, two unequals cannot be treated equally.

20. So far the question pertaining to regularization of the employees of regular establishment is concerned, it would be appropriate to mention that concept of regularization should not be construed in any manner as the act of the authorities regularizing the employees, whose appointments were casual, contractual or on daily wages having sanction of law in consonance with Articles 14 and 16 of the Constitution.

21. Articles 14 and 16 of the Constitution guarantee equality of opportunity in public employment. Any appointment made in violation of Articles 14 and 16 of the Constitution shall make such appointment ab initio void and merely because a temporary employee or a casual daily waged worker continued for some time, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance if the original appointment was not made by following due process of selection, as envisaged by relevant Rules."

4. If these are the parameters and status of such employees then obviously, the rule which was put in place by the respondent State of Bihar is more than what the petitioners could beget despite the declaration of the status both by the Apex Court as well as the Full Bench, referred to above.

5. The present writ application has been filed with the object of assailing certain clauses of the Circular dated 17.10.2013, especially Clause 4 (ii) and (iii) and Clause 5 (ii) and (v).

6. This Court is of the opinion that the benefit which these

petitioners have already derived by virtue of such resolution is not piece-meal offer made by the State. If these clauses are not acceptable to the petitioners for the purposes of regularization and deriving benefit laid down, they have option either to opt out or not to accept regularization at all in the very first place. Once they have done so, the Court will not allow them to selectively attack the resolution by first accepting the benefit out of it and then try to overcome the clauses which provide certain conditional benefit looking at their legal status under the respondent State authorities.

7. The Court, therefore, is not impressed by the submissions so made at the bar with regard to implication of those clauses which any way, in the opinion of the Court, is neither discriminatory nor arbitrary, keeping in view what the Full Bench and the Supreme Court have said on this issue.

8. Writ application is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

U			