

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18200 of 2008

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Rajesh Mishra son of Radha Krishna Mishra, resident of village and P.O.
Guthani, Police Station Guthani and District Siwan.

Petitioner

Versus

1. The State of Bihar
2. The Labour Commissioner, State of Bihar, New Secretariate, Patna.
3. The Deputy Labour Commissioner, Saran Division, Chapra

..... Respondents

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Appearance :

For the Petitioner/s : Mr. Satya Nand Shukla

For the Respondent/s : Mr. Binay Kumar, AC to SC-10

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-03-2017

Heard Sri Satya Nand Shukla, learned counsel for the
petitioner and learned A.C. to Standing Counsel – 10.

2. The petitioner has approached this Court invoking its
writ jurisdiction under Article 226 of the Constitution of India, with a
prayer to direct the respondents to regularize his service on the post
of Clerk with effect from 30-11-1986 and also for quashing of an
order contained in Memo No. 1269 dated 04-05-2006 (Annexure – 7
to the writ petition) whereby the Commissioner-cum-
Secretary/respondent no. 2 has rejected the representation filed by
the petitioner, pursuant to order passed in C.W.J.C. No. 12807 of
1999.



3. It is admitted case of the petitioner that he was initially engaged and worked from 21-05-1986 to 30-11-1986 and thereafter, he was stopped from functioning. Though, in the year 1986 itself, he was stopped from functioning, since his earlier appointment was purely provisional and temporary, the petitioner after lapse of about twelve years filed a writ petition, vide C.W.J.C. No. 12807 of 1999. While the order was going to be passed in the said writ petition, one supplementary affidavit was filed by the petitioner, in which, a stand was taken that in identical situation, other two persons namely Sri Kamleshwar Prasad and Sri Braj Raj Singh were appointed and they were still continuing. This Court, after hearing, dismissed the writ petition. While dismissing, in its order dated 16-12-2005 in C.W.J.C. No. 12807 of 1999 (**Annexure – 1**), this Court has categorically observed that petitioner was not having any enforceable right for regularization. It would be better to quote paragraph – 4 of the order dated 16-12-2005, which is as follows:-

“4. On a perusal of the materials on record and consideration of the submissions of learned counsel for the parties it appears to me that the petitioner was appointed on a purely provisional and temporary basis. In view of the position that he



was appointed purely on temporary basis, his services were dispensed with after he had worked for a little less than seven months. The petitioner has no enforceable right to be regularized in the service. Secondly, on the own showing of the petitioner, he had last worked on 30.11.1986, and preferred the writ petition on 23.12.1999. The writ petition obviously suffers from laches, negligence and unexplained delay. The writ petition is without any merit.”

4. Since supplementary affidavit was filed at the time of disposal of the afore-referred writ petition and no counter affidavit was filed, this Court, while dismissing earlier writ petition, only observed that the Secretary of the Department may examine the aspect relating to appointment of two persons and pass appropriate order. Thereafter, **Annexure – 7** was passed by the Commissioner-cum-Secretary and case of the petitioner was distinguished from the case of Sri Kamleshwar Prasad and Sri Braj Raj Singh. It was noticed that those two persons were not appointed on the same date as petitioner was appointed, but they were appointed subsequently and their cases were not identical to the case of petitioner.

5. Keeping in view the fact that petitioner had only



worked for less than seven months and his work period had already come to an end in the year 2006 as well as the fact that same grievance was earlier considered by this Court and dismissed, there is no reason to further examine the matter.

6. The writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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