

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1299 of 2009

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Pramod Pandit S/o Sri Ramji Pandit, permanent resident of Village – Gopalpur, P.S. – Cheria Bariarpur, P.O. – Akopur, District – Begusarai, presently posted as ‘Daftari’ in Bihar School Examination Board (Higher Secondary), Fraser Road, Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Chairman, Bihar School Examination Board, Patna.
3. The Secretary, Bihar School Examination Board (Higher Secondary), Patna.
4. The Budget & Accounts Officer, Bihar School Examination Board (Higher Secondary) Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar I

For the Respondent/s : Mr. Girijesh Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-04-2017

Heard Sri Arun Kumar No. 1, learned counsel for the petitioner and Sri Girijesh Kumar, learned counsel for respondent no. 2 to 5/Bihar School Examination Board.

2. The present writ petition was initially filed with a prayer to direct the respondents to make payment of salary claiming that though earlier he was appointed as daily-wage Daftari/Sweeper, his service was regularized, vide **Annexure – 2** to the present writ petition i.e. Office Order dated 06-07-2005 issued under the signature of Secretary of the Bihar Intermediate Education Council, Patna. The said decision was taken as per recommendation of the committee presided over by the Chairman.



The petitioner's name finds place at serial no. 91. The petitioner had claimed that though his services were regularized, he was not paid salary. However, during pendency of the writ petition, at least 50 persons from the same list had approached this Court by filing a writ petition, vide C.W.J.C. No. 753 of 2012, with a prayer to direct the respondents to treat them regularized, in view of order dated 06-07-2005, which has been annexed as **Annexure - 7** to the present writ petition. The said writ petition was heard and by a detailed order on 20-02-2013 was allowed with following directions:-

"Accordingly, this writ petition is allowed, the impugned report so far it concerns the petitioners is quashed and the respondents specially respondent no.4, namely the Chairman of the Board is hereby directed to absorb/adjust the petitioners in the Board treating them regular Class-IV employees having their services absorbed by the Council itself in the year 2005 and to pay them salaries, allowances and other benefits of annual increments, merger of dearness allowances with basic pay (as adopted by the State Government), provident fund, earned leave and casual leave as well as the payment of difference of salary from July 2005 when their services were absorbed on regular post till October 2005 as from November 2005 the petitioners were given regular salaries and these benefits must be paid to the petitioners within four months from the date of receipt/production of a copy of this order before respondent no.4."



3. After the order dated 20-02-2013 passed in C.W.J.C. No. 753 of 2012, the petitioner filed supplementary affidavit on 27th April, 2015, with a prayer to dispose of the writ petition in same terms i.e. order dated 20-02-2013 passed in C.W.J.C. No. 753 of 2012.

4. In this case, a counter affidavit was also filed on behalf of the Bihar School Examination Board and after filing of the supplementary affidavit, the respondent no. 2 to 4 filed supplementary counter affidavit on 17th March, 2017 and in paragraph – 4, it was indicated that petitioner has been paid his daily-wage from 01-07-2005 to October, 2016 and subsequently, a sum of **Rs. 43,605/-** was paid to the petitioner, as dailywager, from the month of June, 2016 to October, 2016. In respect of order passed in C.W.J.C. No. 753 of 2012, the Board had preferred an appeal, vide L.P.A. No. 1571 of 2013.

5. Fact remains that after the judgment of the Single Bench passed in C.W.J.C. No. 753 of 2012, the Board had preferred an appeal, vide L.P.A. No. 1571 of 2013 (**Annexure – 10**). In the said appeal, the Bihar School Examination Board had filed a stay petition, vide I. A. No. 8644 of 2013. The said interlocutory application was rejected on 18-04-2016 with following observation:-

“Heard the parties in respect of I.A. No. 8644 of 2013 being an application for interim stay



as filed by the appellant. Having considered the matter and noticing the fact that the writ petitioners, who are the contesting respondents in this appeal, had already been absorbed by the Bihar Intermediate Council, this process cannot, subsequently, be reversed or ignored by the Bihar School Examination Board which took over the work of the Council. I.A. No. 8644 of 2013 for stay is, thus, rejected.”

6. Even after rejection of prayer for stay by the Division Bench, the respondent/Board approached the Apex Court, vide Special Leave to Appeal (C) No. 16074 of 2016, however; subsequently the said appeal was dismissed as withdrawn on 02-09-2016. The said order has been brought on record as **Annexure - 17** to the rejoinder to the counter affidavit of the Board, which was filed on 24th March, 2017. Even though, the prayer for stay of order of Single Bench was rejected up to the Supreme Court, the respondent/Board, which is instrumentality of the State has not behaved like a model employer, rather it has acted as a Class III litigant. Once the issue, raised in the present writ petition, was already adjudicated by a coordinate Bench and prayer for stay of the said order was rejected by the Division Bench and approved by the Supreme Court, in normal course, the respondent/Board was required to take immediate step for redressing the grievance of the petitioner in the light of order passed in C.W.J.C. No. 753 of 2012.



7. Learned counsel for the Board submits that the appeal , vide L.P.A. No. 1571 of 2013, filed against the order of the Single Bench is still pending.

8. On perusal of the record, it is evident that since the order of the Single Bench passed in C.W.J.C. No. 753 of 2012 was not implemented, the petitioners of said writ petition had filed contempt petition and only thereafter, the respondent/Board had implemented the order of the Single Bench.

9. Considering the fact that petitioner’s case stands on similar footing like petitioners of C.W.J.C. No. 753 of 2012, there is no reason to pass a different order.

10. Accordingly, the present writ petition stands allowed in terms of order dated 20-02-2013 passed in C.W.J.C. No. 753 of 2012. The respondent/Board is directed act upon forthwith.

11. The writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2017
Transmission Date	N/A

