

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9496 of 2014

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1. Basant Prasad S/o Late Sheo Kumar Prasad Resident of Village Akhlaspur, P.O. Akhlaspur, P.S. Bhabhua, District Bhabhua Petitioner

Versus

1. The State of Bihar through the Engineer in Chief cum Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna
2. The Chief Engineer (Mechanical) Public Health Engineering Department, Govt. of Bihar, Patna
3. The Superintendent Engineer, Public Health Engineering Department, Ara, Bhojpur
4. The Executive Engineer, Public Health Engineering Department, Bhabhua Division, Bhabhua
5. The Sub Divisional Officer, Public Health Engineering Department, Bhabhua
..... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar Ghosarvey, Adv.
For the Respondents : Mr. Kumar Pankaj, AC to SC V

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 13-09-2017

Heard both sides.

2. The petitioner filed this writ petition for a direction to the respondents to regularize the petitioner on the post of Work Sarkar. It is, further, prayed that the direction be also issued to give consequential benefits as the petitioner has already retired on 31.01.2012.

3. The brief facts are that the petitioner was temporarily appointed on 10.08.1987 on the post of Shrapmista Khalasi by the Superintending Engineer, Public Health and Engineering Department, Bhojpur at Ara. The Executive Engineer, Bhabhua, vide order, dated 09.03.1988, as contained in Memo No. 331, allowed the petitioner to work on the post of daily wages Shrapmista Khalasi on the vacant post as earlier orally ordered by the then Executive Engineer (Annexure 14). The petitioner was asked to work on the post of Work Sarkar on 13.08.1993 by the Superintending Engineer, Public Health and Engineering Department, Ara Division, Bhojpur at Ara, but, the petitioner was removed from the post of Work Sarkar on 07.12.1993 and he was directed to work on the post of daily wages Shrapmista Khalasi.



The petitioner was, again, asked to work on 18.07.1994 on the post of Work Sarkar, but, the letter, by which the petitioner was asked to work on the post of Work Sarkar, was cancelled on 07.10.1994. The petitioner continued to work on the post of Shrapusta Khalasi. He filed several representations before the authorities. Member of the Legislative Assembly also recommended for appointment of the petitioner on the post of Work Sarkar, but, till the date of retirement, i.e., 31.01.2012, the petitioner was not allowed to work on the post of Work Sarkar.

4. The State of Bihar, respondent, filed counter affidavit and, in sum and substance, denied the statement of the petitioner for his appointment on the post of Work Sarkar. The respondents have stated that the petitioner was asked to work on the post of Work Sarkar on 13.08.1993, but, the same letter was cancelled on 07.12.1993. Again, on 18.07.1994 the petitioner was asked to work on the post of Work Sarkar, but, only after less than three months, i.e., on 07.10.1994, the order of posting of the petitioner on the post of Work Sarkar was cancelled and, thereafter, the petitioner was never asked to work on the post of Work Sarkar. The post of Work Sarkar is not a promotional post from the post of Shrapusta Khalasi.

5. The learned counsel for the petitioner submits that on several occasions the authority entrusted him to work as Work Sarkar, but, without any reason he was removed from the post of Work Sarkar and directed to work on the post of Shrapusta Khalasi. The learned counsel for the petitioner referred Annexure 10 by which Ramlal Singh, a Member of Legislative Assembly and Minister, Public Health and Engineering Department, sent a letter to the Superintending Engineer to take work of 'Karyadarshak' from the petitioner after promoting him on the post of Work Sarkar, but, thereafter, the petitioner was never posted as Work Sarkar. The petitioner retired on 21.01.2012. The learned counsel for the petitioner, further, submits that since the petitioner had already worked for about a year on the post of Work Sarkar and a Division Bench of this Court in the case of **Koshi Project Association & Anr. Vrs. The State of Bihar & Ors.**, reported in **2007(1) P.L.J.R.**,



358, held that the petitioner originally engaged as Mazdoor, Class IV employee, in the Work Charge and promoted to the post of Clerk/Assistant with effect from 01.06.1973, the promotion was regularized, but, thereafter, the promotees were reverted to the post of Work Charge Establishment. It is held that the person working on the post of Work Charge for more than a year is deemed to have become a member of the permanent establishment.

6. On the other hand, the learned counsel for the State has submitted that the petitioner is not entitled to be regularized on the post of Work Charge as he was never appointed on the post of Work Charge, in accordance with law. The petitioner was appointed on the post of Shrapusta Khalasi on daily wages on 10.08.1987. Later on he was regularized on the post of Shrapusta Khalasi. The petitioner, through back door on the basis of the recommendation made by the Member of Legislative Assembly and others, got appointment on the post of Work Sarkar, but, later on the same letter was withdrawn/cancelled and, therefore, the petitioner have got no right to continue on the post of Work Sarkar and got consequential benefits.

7. From the facts, it is admitted that the petitioner was appointed on the post of Shrapusta Khalasi on daily wages on 10.08.1987 in the Public Health and Engineering Department, Bhabhua Division. Later on, the petitioner was regularized on the post of Shrapusta Khalasi, but, somehow he got a letter issued, by which he was asked to work on the post of Work Sarkar on 13.08.1993, but, when this fact came to the knowledge of the superior authority, the letter appointing the petitioner on the post of Work Sarkar, was cancelled on 07.12.1993. The petitioner was, again, asked to work on the post of Shrapusta Khalas. Again, on 18.07.1994 the Superintending Engineer, for the reasons best known to him, without following any procedure for appointment, asked the petitioner to work on the post of Work Sarkar, but, by the order of the superior authority the same letter was cancelled on 07.10.1994. The petitioner was hardly allowed to work on the post of Work Sarkar for only two and half months, i.e., from 08.07.1994 to



07.10.1994. The petitioner, thereafter, got his case recommended by a Member of Legislative Assembly, for appointment of the petitioner on the post of Work Sarkar, but, the authority did not find any merit and, accordingly, the petitioner was never allowed to work on the post of Work Sarkar. The petitioner remained working on the post of Shrapusta Khalas and he retired on 21.01.2012.

8. Therefore, I find that the petitioner has got no right to continue on the post of Work Sarkar and to get consequential benefits thereof.

9. Accordingly, I do not find any merit in this writ petition and the same is **dismissed**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.09.2017
Transmission Date	

