

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3947 of 2014

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1. Prakash Kumar Srivastav S/O Late Brij Nandan Sahay Resident of Village Newari, P.S. Barauli, District Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar - Through Principal Secretary, Rural Works Department, Government Of Bihar, Patna
2. The Engineer-In-Chief, Rural Works Department, Bihar, Patna
3. The Commissioner, Rural Works Department, Bihar, Patna
4. The Commissioner, Road Construction Department, Bihar, Patna
5. The Deputy Secretary, Road Construction Department, Government Of Bihar, Patna
6. The Superintending Engineer, Road Construction Department, Government Of Bihar, Patna
7. The Chief Engineer, Advance Planning Division, Road Construction Department, Bihar, Patna
8. The Executive Engineer, Central Laboratory Rural Works Department, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. P. Srivastava, advocate
Mr. Sanjeev Nikesh & Santosh Bharti

For the Respondent/s : Mr. Devendra Kr Sinha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 14-11-2017

Heard both sides.

2. This writ petition is being disposed of at the stage of admission itself, with the consent of parties, as pleadings are complete.

3. The petitioner has filed this writ petition for quashing the order dated 10.09.2010 (Annexure-4) issued under the signature of Deputy Secretary, Road Construction Department, Government of Bihar whereby he directed all the Superintending Engineers to terminate the services of work charge employees in the light of circular No. 6394 dated 23.10.1987



issued by the Finance Department, Government of Bihar. The petitioner further seeks quashing of the order dated 27.10.2010 (Annexure-5) issued under the signature of Executive Engineer, Rural Works Department, Bhagalpur by which service of the petitioner has been terminated. The petitioner further prays to direct the respondents to consider the case of petitioner for regularization of his services as persons junior to the petitioner have already been regularized.

4. The brief facts is that the petitioner was appointed vide memo No. 149 dated 30.03.1987 in the work charge establishment by the Chief Engineer, Planning Division, Road Construction Department. Since then the petitioner was working in the work charge establishment till his termination on 27.10.2010 (Annexure-5). The petitioner was initially appointed in the Soil Investigation and Training Division, Road Construction Department, Government of Bihar. The petitioner filed CWJC No. 17428 of 2008 for payment of his salary but, in the meantime, the Deputy Secretary, Road Construction Department, issued the letter, as contained in memo No. 13573(s) (Annexure-4) directing all the Superintending Engineers to terminate the services of work charge employees, who were appointed after 23.10.1987, and in pursuance of the aforesaid order, during the pendency of CWJC No. 17428 of 2008, vide order dated 27.10.2010 (Annexure-5), the service of the petitioner was terminated. The petitioner brought all these facts by filing I.A. No. 8891 of 2013 in CWJC No. 17428 of 2008 for making amendment in the prayer portion. CWJC No. 17428 of 2008 was disposed of on 16.12.2013 with a



direction to the respondents to pay salary to the petitioner within four months and, at the same time, liberty was granted to the petitioner to file a fresh writ petition, challenging the order of his termination.

5. The Government of Bihar issued resolution, as contained in memo No. 489 dated 10.05.2005 with regard to services of daily wages employees working against the sanctioned posts in the different departments of the State of Bihar. From perusal of the aforesaid resolution, it would appear that the State Government fixed cut off date as 11.12.1990 for daily wages employees, who have worked for more than 240 days, under the State Government. The petitioner was working in the work charge establishment from 30.03.1987 and from before the petitioner was working as daily wages employees.

6. The State filed counter affidavit and supplementary counter affidavit. The respondents have further stated that petitioner earlier filed CWJC No. 14455 of 2002 for regularization of his service and this court vide order dated 28.03.2003 directed the respondents-State to consider and dispose of the representation of the petitioner taking into consideration that Ziyauddin and Kailash Pandit, who were appointed in the work charge establishment after the appointment of petitioner, were getting salary. The Deputy Secretary, Road Construction Department by resolution No. 13573(s), in pursuance of resolution of Finance Department, as contained in letter No. 6394 dated 23.10.1987, directed the different departments to remove all the employees working under work charge establishment after 23.10.1987 and in pursuance of the aforesaid letter of the Deputy Secretary,



Road Construction Department, the petitioner was removed from service with effect from 27.10.2010 (Annexure-5). The respondents further stated that petitioner was disengaged in pursuance of the letter issued by the Finance Department and there is no requirement of issuing notice to the petitioner before termination of his service. The respondents filed another supplementary counter affidavit on 03.10.2017, in pursuance of the order of this court, as to services of how many persons, junior to the petitioner, appointed after 23.10.1987, were regularized. The respondents through Annexure-A stated that services of many persons, appointed after 23.10.1987, were regularized.

7. Sri S. P. Srivastava, the learned counsel for the petitioner submits that earlier the Government has fixed cut off date as 23.10.1987 and the persons appointed after 23.10.1987 shall be removed from service but the Government again issued another letter No. 489 dated 10.05.2005 stating that the persons who were working on daily wages till 11.12.1990 shall be regularized and the State of Bihar regularized the services of many persons in pursuance of aforesaid regulation, as would appear from Annexure-7. It is further submitted that termination of service of the petitioner on the ground that he was absent from duty since September, 2007 is illegal. The Executive Engineer has referred letter No. 13573(s) dated 10.09.2010 by which the Deputy Secretary, Road Construction Department directed the different departments to remove the services of persons, who were appointed after 23.10.1987, in view of resolution of Finance Department, as contained in memo No. 6394 dated 23.10.1987. It



is further submitted that petitioner was removed from service in pursuance of the aforesaid letter and not on account of absence. The petitioner was working in the work charge establishment and he was doing the work of permanent nature. If the petitioner was found absent from duty, show cause notice should have been issued and the petitioner should have been asked to reply but no such show cause was ever issued. The petitioner earlier filed CWJC No. 17428 of 2008 for payment of salary but, during the pendency of aforesaid writ petition, the petitioner was illegally removed from service. It is submitted that from perusal of Annexure-A, attached with the supplementary counter affidavit of the respondents, filed on 03.10.2017, it would appear that services of many persons, such as, Md. Nisar Ahmad (Sl. No. 82), Rajendra Sah (Sl. No. 83) and Sanjay Kumar Tiwary (Sl. No. 85), who were appointed after 23.10.1987 on daily wages, were regularized. The petitioner was working as Chowkidar, a sanctioned post, in the work charge establishment. The case of petitioner stands on better footing as that of persons whose services have already regularized.

8. On the contrary, the learned counsel for the State submits that, of course, services of many persons were regularized but they were working continuously till 31.01.2014 on which date the order as contained in memo No. 1247 (Annexure-A) was issued. The petitioner was removed from service on 27.10.2010 on account of his long absence from duty and, therefore, the petitioner is not entitled to be regularized in service.

9. It appears from the facts and submissions of the parties that admittedly the petitioner was appointed on daily wages prior to 23.10.1987.



While the petitioner was working on daily wages, the Superintending Engineer issued letter dated 30.03.1987, as contained in memo No. 149, by which the petitioner was asked to work as Chowkidar in the pay scale of Rs. 350-5-400 E.B.-5-435. The petitioner joined on the post of Chowkidar on 01.11.1987 and he worked till 27.10.2010. The petitioner firstly moved this court in CWJC No. 14455 of 2002 for regularization of his service and also for payment of salary. The State contended that since the petitioner was appointed after 23.10.1987 he is not entitled to be regularized but when it has been pointed out that Ziyauddin Ahmad and Kailash Pandit, who were appointed along with petitioner, were getting salary, this court directed the respondents that if Ziyauddin Ahmad and Kailash Pandit were paid salary, the petitioner should also be paid his salary. The petitioner continued to work in the work charge establishment on the post of Chowkidar, which is a sanctioned post. On 10.09.2010 the Deputy Secretary, Road Construction Department issued letter No. 13573(s) directing the head of the departments that the persons appointed after 23.10.1987 in the work charge establishment should be removed from service.

10. It appears from Annexure-5 that Executive Engineer referred letter No. 13573(s) dated 10.09.2010 and removed the petitioner from service with immediate effect. It is also mentioned in the letter that petitioner was absent since September, 2007 but without asking any show cause about the absence of the petitioner from the month of September, 2007, the petitioner was removed from service. The petitioner was working



on the sanctioned post of Chowkidar in the work charge establishment for more than 20 years and without giving any notice and asking show cause the order of termination of service of the petitioner is in violation of principles of natural justice and, therefore the same is bad and illegal.

11. It further transpires that the State of Bihar has issued resolution, as contained in memo No. 489, by which it has been resolved that the persons who have been working in the work charge establishment till 11.12.1990 their services can be regularized and in pursuance of the aforesaid resolution services of many persons were regularized. Admittedly, the petitioner was appointed in the work charge establishment on the post of Chowkidar, which is a sanctioned post, from 30.03.1987 and, therefore, petitioner is also entitled for regularization of his service as many of the persons appointed after the petitioner, have been regularized vide notification contained in Annexure-A.

12. Having considered the facts aforesaid, this writ petition is allowed and the orders dated 10.09.2010 (Annexure-4) and the order dated 27.10.2010 (Annexure-5) are set aside and the respondents are directed to regularize the service of the petitioner within four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.12.2017
Transmission Date	N.A.

