

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15731 of 2012

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1. Arun Kumar Singh son of Sri Gaya Prasad Singh, resident of village- Samartha, P.S.- Bihutipur, District- Samastipur
 2. Jagbali Prasad son of Late Janki Sao, resident of Mohalla- Rajendra Nagar, P.S.- Kadamkuan, District- Patna
 3. Chandan Bhushan Singh son of Late Ram Nirikh Singh, resident of village- Piyaria, P.S.- Gaurichak, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna
2. Deputy Secretary Department of Urban Development and Housing, Govt. of Bihar, Patna
3. The Bihar State Housing Board through the Managing Director, Sardar Patel Path, Patna
4. Secretary, Bihar State Housing Board, Sardar Patel Path, Patna
5. Executive Engineer, Bihar State Housing Board, Patna Division-II, Bhootnath Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushil Kumar, Advocate
For the Housing Board : Mr. Ansuman Singh, Advocate
For the State : Mr. Sanjay Kumar Giri, G.P.-9
: Mr. Santosh Kumar Mishra, A.C. to G.P.-9

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 04-02-2017

This writ application has been filed by the petitioners challenging the order of the Managing Director of Bihar State Housing Board, Patna (For short 'the Board') communicated vide memo no.6301 dated 11.7.2012 (annexure-12) by the Secretary of the Board by which recovery was directed to be made from the salary and pensionary benefits of the petitioners.

2. The petitioners no.1, 2 and 3 were appointed on daily wages with effect from 01.02.1982, 01.07.1981 and 01.10.1983



respectively. The petitioners no.1 and 3 were appointed to the post of Peon whereas petitioner no.2 was appointed to the post of Typist in the Board. The claim of the petitioners is that altogether 342 appointments were made between the period 1978 and 1985 against the sanctioned posts in the Board. The Board of Directors of the Board in its meeting took a decision that those employees who are working in the Board on or before 21.01.1985, their services should be regularized from 19.09.1990.

3. It is stated that the order to that effect was issued on 11.02.1991. However, after taking the said decision, the Board started regularizing the workers in pick and choose method. Under such circumstances, one Gauri Shankar Prasad and others who were appointed and working on daily wages to the post of Chaukidar like petitioners in the Board filed writ application being CWJC No.1171 of 1988 before the then Ranchi Bench of this Court for regularization of their services which was dismissed by order dated 18.07.1988 and finally the matter was carried to the Hon'ble Supreme Court vide S.L.P. (Civil) 11538 of 1988.

4. It is stated that by order dated 13.02.1991 passed in Civil Appeal No.766 of 1991 the Hon'ble Supreme Court directed the Board to regularize the services of 257 daily wage workers under work charge establishment. It also directed they shall cease to be daily workers with effect from 19th September, 1990.



5. It is stated that after order dated 13.02.1991 passed by the Hon'ble Supreme Court the services of 192 daily wage workers were regularized by the Board in the year 1991 under work charge establishment. Neither the roster rule of reservation was followed nor the seniority of the daily wage workers was followed in regularizing 192 out of 257 posts under the work charge establishment.

6. It is stated that regularization of 192 daily wage workers were made on pick and choose basis. Finding no way out, the petitioners and others filed writ application bearing CWJC No.3630 of 1992 before this Court for regularization of their services under work charge establishment as per the order of the Hon'ble Supreme Court.

7. The said writ application was disposed of by this Court on 29.08.1997 with a direction that the services of all 257 persons who are in the list as per direction of the Hon'ble Supreme Court be regularized.

8. Thereafter, the Board in place of regularizing the services of the petitioners and other similarly situated persons under work charge establishment issued a letter vide memo no.576 dated 02.02.2001 under the signature of the Managing Director of the Board by which all the regional Executive Engineers were directed to retrench the services of the remaining daily wage workers after giving them advance remuneration of one month as per the provisions of Section 25-F of the Industrial Disputes Act.



9. The said order dated 02.02.2001 was challenged by the petitioners and others persons by filing writ application bearing CWJC No.3337 of 2001 before this Court and by order dated 19.03.2001 this Court held that the impugned action of the respondent Board in terminating the services of such persons who come within the list of 257 persons covered by order of the Hon'ble Supreme Court is patently illegal and tantamount to contempt of Hon'ble Supreme Court. Accordingly, the impugned order was set aside and the respondents were directed to take urgent steps to comply with the orders of the Hon'ble Supreme Court and complete the regularization of remaining sixty five persons in terms of the order passed by the Hon'ble Supreme Court within a period of six weeks from the date of production/communication of a copy of the order.

10. The said order dated 19.03.2001 was challenged by the Board filing a memo of appeal vide L.P.A. No.419 of 2001 before this Court and by order dated 03.05.2001 the same was also dismissed.

11. Thereafter, the Board challenged the order dated 03.05.2001 of the Division Bench of this Court before the Hon'ble Supreme Court which also was dismissed.

12. As no action was taken by the Board for regularization of services of remaining sixty five daily wage workers including the petitioners a contempt application vide M.J.C. No.1354 of 2001 was filed by the petitioners before this Court for initiating a contempt of



court proceeding against the officials of the Board for non-compliance of the order dated 19.03.2001 passed in CWJC No.3337 of 2001.

13. It is stated that during the pendency of the contempt application an office order was issued vide memo no.1631 dated 08.05.2002 under the signature of Secretary of the Board whereby the services of the petitioners and others were regularized under work charge establishment. However, the regularization of services was made with immediate effect in stead of with effect form 19.09.1990.

14. It is stated that when the contempt application was taken up, the counsel appearing for the Board submitted that if required the Board would issue necessary clarification in view of the order passed by the Hon'ble Supreme Court and accordingly, the contempt application was disposed of as not pressed.

15. When no clarification was issued, the petitioner no.1 again filed a contempt application bearing M.J.C. No.1958 of 2002 before this Court. During the pendency of the contempt application an office order was issued vide memo no.47 dated 06.01.2003 under the signature of the Secretary of the Board by which the claim of the petitioners for their regularization with effect from 19.09.1990 as per the direction of the Hon'ble Supreme Court was rejected.

16. Thereafter, the petitioner no.1 challenged the aforesaid order dated 06.01.2003 by filing a writ application before this Court vide CWJC No.9029 of 2004. The said case remained pending for



long time. However, during the pendency of the writ application the Deputy Secretary, Housing Department, Government of Bihar wrote a letter to the Secretary of the Board and requested him to treat the petitioner under the work charge establishment with effect from 19.09.1990.

17. Thereafter, the Secretary of the Board vide office order as contained in memo no.5057 dated 04.09.2008 partly amended the office order no.1631 dated 08.05.2002 and the services of the petitioners and others were ordered to be regularized under the work charge establishment with effect from 19.09.1990.

18. It is stated under the circumstances, CWJC No.9029 of 2004 filed by petitioner had become infructuous and as such it was not pressed. Hence, CWJC No.9029 of 2004 was dismissed for want of prosecution vide order dated 30.08.2012.

19. It is stated that as per the office order dated 04.09.2008 the petitioners were paid difference of salary under work charge establishment from 19.09.1990 to 08.05.2002 in the year 2008 itself.

20. The contention of the petitioners is that almost four years after the payment was released all on a sudden on 11th July, 2012 vide memo no.6301, the Managing Director of the Board ordered for recovery from the salary and, thereafter, from post retiral benefits of the petitioners in installments of the amount paid to them in lieu of difference of salary from 19.09.1990 to 08.05.2002.



21. It is contended on behalf of the petitioners that the impugned office order 11.07.2012 as contained in annexure-12 to the writ application was passed without issuance of any notice upon the petitioners. It is also submitted that all the 192 persons whose services were initially regularized under the work charge establishment in the year 1991 with effect from 19.09.1990 pursuant to the order passed by the Hon'ble Supreme Court in Civil Appeal No.766 of 1991 have been paid their salary under work charge establishment with effect from 19.09.1990. It is further contended that the impugned order passed by the respondent Board is patently bad in the eyes of law in view of the direction given by the Hon'ble Supreme Court in Civil Appeal No.766 of 1991 and the orders passed by this Court in CWJC No.3630 of 1992 and CWJC No.3337 of 2001.

22. On the other hand, learned counsel for the Board submitted that since the petitioners were illegally paid their salary and other monetary benefits with effect from 19.09.1990, the order of recovery was passed by Board. He submitted that the said payment was illegal in view of order no.47 dated 6.1.2003 passed by the Board by which claim of the petitioners for their regularization with effect from 19.09.1990 was rejected. He contended that the said order no.47 dated 06.01.2003 was challenged before this Court in CWJC No.9029 of 2004 and the said case was dismissed for want of prosecution. Hence, the order dated 06.01.2003 had attained finality and, therefore,



subsequent payment made by the petitioners with effect from 19.9.1990 was patently illegal. Hence, no fault can be found with the impugned order passed by the Board.

23. I have heard learned counsel for the parties and perused the record.

24. I find no substance in the arguments advanced by the learned counsel for the Board.

25. There is no dispute to the fact that the name of the petitioners finds place in the list of 257 workers which had been approved by the Administrative Department of the Board for regularization in work charge establishment.

26. In Civil Appeal No.766 of 1991 the Hon'ble Supreme Court had clearly directed the Board to regularize the services of 257 workers in work charge establishment. It had also directed that they shall cease to be daily workers with effect from 19th September, 1990. The operative part of the order dated 13th February, 1991 passed in Civil Appeal No.766 of 1991 of the Hon'ble Supreme Court reads as under:-

“We are satisfied on the material placed that 257 daily workers are entitled to be regularized in the work-charge Establishment as per the chart enclosed to the letter dated 30.6.1990. The names of these 257 workers have been approved by the Administrative Department of the Housing Board



on 15th December, 1990.

We, therefore, direct that the Housing Board shall regularize the services of these 257 workers in its work-charge Establishment and they shall cease to be daily workers with effect from 19th September, 1990.” (emphasis mine)

27. When the aforesaid order of the Hon’ble Supreme Court was not complied with by the respondent Board, the petitioner had to knock the door of this Court by filing CWJC No.3630 of 1992 and this Court vide order dated 29th August, 1997 directed the Board to regularize the remaining 65 persons in the work charge establishment. The operative part of the order passed by this Court in CWJC No.3630 of 1992 reads as under:-

In that view of the matter, this Court holds that only operative direction which it can pass is that after the regularization of 192 persons, in respect of the remaining persons i.e. 65 persons the said Board will follow the following direction in the matters of regularization:-

i) Such regularization must be on the basis of seniority of the daily wage workers.

ii) In matter of such regularization, reservation policy as was existing on the date of the Supreme Court order ought to be followed.

iii) The process of regularization directed by the Supreme Court order in 1991 may be completed within a period of next six



months from the date of receipt/
communication of a copy of this order.”

(emphasis mine)

28. Thereafter, instead of complying with the direction of this Court, a mischief was done by passing an order whereby direction was made to retrench the services of remaining daily wage workers after giving them advance of one month as per the provisions of Section 25-F of the Industrial Disputes Act.

29. Thus, the remaining daily wage workers were forced once again to approach this Court by filing CWJC No.3337 of 2001. After hearing the parties this Court vide order dated 19.03.2001 set aside the impugned action of the respondents in terminating the services of such persons who come within the list of 257 persons covered by the order of the Hon'ble Supreme Court holding that the order was not only illegal, but it tantamount to contempt of the Hon'ble Supreme Court. The order passed by this Court in CWJC No.3337 of 2001 reads as under:-

“From the materials available on record as well as from the counter affidavit it is clear that the Hon'ble Supreme Court vide order dated 13-2-1991 as contained in annexure-1 directed the respondents to regularize the services of 257 daily workers whose names had been approved by the administrative department of the Housing Board on 15th December, 1990. It transpires that only 192 persons out of 257 of the said list have been regularized by the respondents and with regard to remaining 65 persons regularization



is not being done in spite of subsequent direction of this Court also, dated 29th August, 1997 as contained in annexure-4. A contempt matter is also said to be pending in this regard. Once again the stand of the respondent, Housing Board appears to be that it is unable to regularize the remaining 65 daily workers in terms of order of the Apex Court and of this Court because of directions creating problem in such regularization as contained in annexure-5 to the writ application as well as annexure-A/1 to the counter affidavit.

No doubt in the relevant provisions of the Bihar State Housing Board Act, the department of Housing Board has powers to take policy decision but such power cannot be exercised so as to sit over the final orders of the Apex Court and this Court. In such circumstances, the impugned action of the respondents in terminating the services of such persons who come within the list of 257 persons covered by the order of the Apex Court contained in annexure-1 is patently illegal and tantamounts to contempt of the Apex Court. Accordingly, the impugned order is set aside and the respondents are directed to take urgent steps to comply with the orders of the Apex Court and complete the regularization of remaining 65 persons in terms of the order of the Apex Court within a period of six weeks from the date of production/communication of a copy of this order before the concerned respondents. It is also made clear that this writ application is



being allowed only in view of the order of the Apex Court and it should not be construed that this Court is affording any advantage to continue in the service of the Housing Board to those who are not in the list of 257 persons.
(emphasis mine)

30. The persistence of the Board in not obeying the orders of the Court did not come to an end even thereafter and they took no steps for regularization of the services of remaining 65 daily wage workers including the petitioners who were forced to file a contempt application before this Court for initiating contempt proceeding against the concerned opposite parties and during the pendency of the contempt proceeding the petitioners and others were taken under the work charge establishment, but again mischief was done by the Board by not regularizing them with effect from 19.09.1990. Not only this, the representation filed by the daily wage workers including the petitioners was rejected by the Secretary of the Board vide order dated 06.01.2003 for regularization of their services with effect from 19.09.1990.

31. It is true that the order dated 06.01.2003 passed by the Secretary of the Bihar State Housing Board by which claim of the petitioners for their regularization with effect from 19.09.1990 was rejected was challenged before this Court by filing CWJC No.9029 of 2004 and the writ application was dismissed for want of prosecution



vide order dated 30.08.2012, but the dismissal of the writ application would be of no consequence in view of the fact that during the pendency of the application the Board itself had rectified its mistake pursuant to the direction made by the Housing Department vide memo no.5057 dated 04.09.2008 (annexure-11) whereby it had partly amended the office order no.1631 dated 08.05.2002 by regularizing the services of the petitioners under work charge establishment with effect from 19.09.1990. In that view of the matter, no cause of action survived for the petitioners and relief prayed in CWJC No.9029 of 2004 had become infructuous. Hence, I find no substance in the arguments advanced by the learned counsel for the Board that because of dismissal of the writ application bearing CWJC No.9029 of 2004 for want of prosecution vide order dated 30.08.2012 the order dated 06.01.2003 passed by the Board by which the claim for regularization of services of the petitioners with effect from 19.09.1990 was rejected had attained finality.

32. In the back ground of the facts stated above, in my considered opinion, the impugned order dated 11.07.2012 as contained in annexure-12 to the present writ application by which amount paid to the petitioners in lieu of difference of salary from 19.09.1990 to 08.05.2002 has been ordered to be recovered from the salary and thereafter from post retiral benefits of the petitioners in installments is a glaring example of executive arbitrariness and



administrative high handedness. It is patently bad in the eyes of law. Accordingly, it is set aside with cost of rupees fifteen thousand for unnecessarily harassing the petitioners for almost twenty six years despite their being order of the Hon’ble Supreme Court in their favour.

33. The writ application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.02.2017
Transmission Date	

