

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16225 of 2006

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Sanjay Kumar son of Sri Laxman Singh, Resident of Village and P.O. – Akaurhi,
P.S. Akaurhi, Gola, District – Rohtas at Sasaram.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Road Construction Department, Bihar, Patna.
3. The Engineer-in-Chief, P.W.D., Bihar, Patna.
4. The Superintending Engineer, Bhojpur Circle, P.W.D. Ara.
5. The Executive Engineer, P.W.D. Buxar Division, Buxar.
6. Md. Mustakim Ansari S/o not known posted as Khalashi, Dehri Road Division, Dehri, P.W.D. Dehri District – Rohtas at Sasaram.
7. Md. Basir Anwar S/o not known, posted as Khalasi Road Division, Buxar, Distt. Buxar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar I

For the State : Mr. S.Raza Ahmad, A.A.G.-5

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 12-01-2017

Heard Sri Arun Kumar, learned counsel for the
petitioner and Mr. S. Raza Ahmad, learned Addl. Advocate General –

5.

2. The petitioner, who approached this Court invoking
its writ jurisdiction under Article 226 of the Constitution of India,
has made a prayer for granting similar relief to the petitioner, as has
been granted in C.W.J.C. No. 6445 of 1999 disposed of on 28-02-
2005 (**Annexure – 1** to the writ petition).

3. Short fact of the case is that the petitioner was initially
engaged on the post of *Khalashi*, vide Office Order No. 204/94 dated



09-12-1994 issued under the signature of Superintending Engineer, Bhojpur Circle, Road Construction Department, Ara (**Annexure - 2** to the writ petition). By the said order, alongwith petitioner about other eight persons were appointed provisionally for a period of three months. It is case of the petitioner that petitioner continued in service, however; by subsequent order i.e. Office Order No. 87/95 dated 17-08-1995 issued from the office of Superintending Engineer, Road Construction Deptt., Ara the petitioner as well as 29 other similarly situated persons were relieved from the service. A plea has been taken that from the said list, two persons namely Amodh Bihari Singh (*Mali*) and Prem Prakash Singh had approached this Court by filing a writ petition, vide C.W.J.C. No. 6445 of 1999 taking the plea that their termination was illegal.

4. Learned counsel for the petitioner, by way of referring to **Annexure - 1** to the writ petition, submits that this Court had interfered with the matter and remitted back the matter to the competent authority to examine the case of the petitioners and pass suitable order. It has been argued that in compliance with the order of the writ court i.e. order dated 28-02-2005 passed in C.W.J.C. No. 6445 of 1999, two petitioners of the said writ petition have already been re-appointed. Learned counsel for the petitioner makes a prayer that similar order may be passed in this case and direction



may be issued to the respondent no. 2 to examine the case of the petitioner and re-instate him. It has been argued by learned counsel for the petitioner that once the order, whereby petitioner alongwith other persons were terminated, was examined by this Court and this Court had interfered and remitted back the matter to the authority concerned, vide C.W.J.C. No. 6445 of 1999, similar order is required to be passed in the present case also. He has argued that if in an identical issue, this Court had passed an order, there was no need for the petitioner to again assail the same order. To substantiate his submission, learned counsel for the petitioner has place heavy reliance on a judgment of this Court reported in **2006 (2) P.L.J.R. 573 (Ajay Kumar Srivastava – Vs. The State of Bihar & Ors.)**. He has specifically referred to paragraph – 6 and 8 of the judgment, which are quoted here-in-below:-

“6. Learned counsel for the petitioner assails the actions of the State authorities relying upon the direction of this Court whereby the entire order dated 2.1.99, which relates to this petitioner also, had been put in abeyance by the order dated 14.3.2000 of this Court and thus, the benefit of that order should be given to the petitioner also as there was no justification for the State authorities to not reinstate the petitioner in terms of the said order although he was not a party to the said writ petition. In this regard learned counsel has referred to a large number of decisions of the Supreme Court wherein it has been laid down that where relief is granted by the Court in writ proceedings to certain persons then the authority must grant the same benefits to similarly situated persons even if such persons



had not approached the Court and not a party to the said litigation. There is no need to refer to the said judgments as proposition of law is well established. The order dated 14.3.2000 was not passed by the Court on any fact which was related to the petitioners of those cases and do not apply to the case of the present petitioner. The petitioner is identically situated to the petitioners of C.W.J.C. No. 569/99 and, thus, the benefit of the said order should have been granted to him also by the State authorities. In fact, by the order dated 14.3.2000 this Court clearly directed that till regular appointment is made, the impugned order dated 2.1.1999 shall remain in abeyance. In view of the said order the State authorities were obliged to reinstate the petitioner in service also and their not doing so borders upon contempt of the order of this Court, which has been upheld by the Supreme Court.

8. In the aforesaid circumstances, the authorities are directed to forthwith reinstate the petitioners and grant him the same benefit as has been granted to the petitioners of C.W.J.C. No. 569/99. However, since it is requested in the letter dated 6.10.98 that the petitioner had stopped going to school from July, 1997 itself, it would be open to the authorities to take such action in this regard as is permitted by law after reinstating him."

On aforesaid ground, a prayer has been made to allow the writ petition in the same terms.

5. Learned Addl. Advocate General – 5, opposing the prayer of the petitioner, has raised preliminary objection on the point that though petitioner has approached this Court after issuance of termination order i.e. **Annexure – 5** to the writ petition dated 17-08-1995, the petitioner has not at all pleaded or made a



prayer for quashing of the impugned order. He has further argued that the appointment of the petitioner itself was illegal and back-door appointment and as such, after noticing the fact that appointment was illegal, there was no need for conducting a detailed enquiry and simply, vide **Annexure – 5**, the petitioner alongwith others were terminated. By way of referring to **Annexure – 1** to the writ petition i.e. order dated 28-02-2005 passed in C.W.J.C. No. 6445 of 1999, it has been argued that even the petitioner's case is not identical to the case of Prem Prakash Singh and others.

6. Besides hearing, I have also perused the materials available on record. Fact remains that vide **Annexure – 5** to the writ petition, the petitioner was terminated from the service alongwith other 29 persons. It is also not in dispute that initially the petitioner was appointed for a fixed period of three months, that too without any advertisement or showing the post as sanctioned post. So far as the claim of learned counsel for the petitioner that case of petitioner stands on similar footing of C.W.J.C. No. 6445 of 1999 is concerned, after perusing the order, it is evident that petitioners of C.W.J.C. No. 6445 of 1999 had taken the plea that ofcourse, vide order dated 17-08-1995 (**Annexure – 5**), two petitioners of C.W.J.C. No. 6445 of 1999 were terminated alongwith the present petitioner and other persons, subsequently in the month of December, 1995 itself, those



persons were re-appointed and this was the reason that this Court was persuaded to remand the matter in respect of petitioners of C.W.J.C. No. 6445 of 1999 to the Secretary, Road Construction Deptt. for examining the case. It appears that since the petitioner was earlier, even after termination, was re-engaged, in the present writ petition, he has not made any prayer for quashing of his termination order, rather he has made a prayer for passing order similar to order passed in C.W.J.C. No. 6445 of 1999. Moreover, the Court is of the opinion that for the time being, if it is assumed that petitioner's case was similar to the case of Prem Prakash Singh & another, the present writ petition was filed in the year 2006 i.e. almost after 11 years from the date of issuance of initial termination order. The Court is of the opinion that if one's claims equality before this Court, in that event, it is required to satisfy the Court that the said person immediately after the cause of action had approached this Court. If petitioner himself has slumbered over his right for several years, after lapse of about 11 years, there is no point to examine the case on the ground that the case of the petitioner is similar to the earlier case. This Court is of the view that even in case of identical footing one may not be equally given relief if he comes much latter than the person in whose favour order was passed.

7. Besides this, it is recorded that petitioner's case is not



exactly similar to the case of Prem Prakash Singh and others. Moreover, appointment being illegal and backdoor, there is no reason, even for remanding back the matter to the concerned authority.

8. The writ petition stands dismissed.

(Rakesh Kumar, J.)

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