

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18242 of 2010

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Binod Kumar Singh, son of Late Ramanand Singh, resident of Village- Bharwari,
P.O. Bharwari, Via-Shilaut, Distt-Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Secretary, Personnel and Administrative Reforms Department Government of Bihar, Patna
3. Commissioner-Cum-Secretary, Public Health and Engineering Department Government of Bihar, Patna, Bihar
4. Deputy Secretary, Public Health and Engineering Department Government of Bihar, Patna, Bihar
5. Deputy Secretary, Finance Department Government of Bihar, Patna, Bihar
6. Chief Engineer, Public Health and Engineering Department Government of Bihar, Patna, Bihar
7. Superintending Engineer, Public Health and Engineering Muzaffarpur Zone, Muzaffarpur, Bihar
8. Executive Engineer, Public Health Division Muzaffarpur, Bihar
9. Sub Divisional Officer, Public Health Sub-Division Saraya, Muzaffarpur, Bihar
10. District Accounts Officer, Pay Fixation Section Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Dubey
Ms. Mamta Vijaya
Mr. Uma Shankar Singh, Advocates.
For the Respondents : Mr. Brajesh Kumar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-08-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for directing the
respondent-authorities to regularize the petitioner's services from the
initial date of his appointment by the office order no. 113 dated



07.08.1980, with all consequential benefits. Further prayers have been made in I.A. No. 1871 of 2016 for shifting the effect of absorption of service of the petitioner issued vide Memo No. 899 dated 20.06.2014 retrospectively from the date when persons junior to him were absorbed/adjusted in service i.e. 29.11.2006, with all consequential benefits.

3. The short facts of the case according to the petitioner are that the petitioner was appointed for a period of three months as peon in regular establishment in the Public Health Sub-Division, Saraya by order dated 07.08.1980 which was extended for a further period of three months. Such appointment was however cancelled in terms of memo no. 1039 dated 12.03.1981. Thereafter, the petitioner along with 77 other persons were appointed under the work charge establishment on the post of "Nalkup Khalasi" or "Tubewell Khalasi" in the Public Health Sub-Division, Saraiya vide office order no. 5 dated 26.02.1988 with retrospective effect from 01.02.1988 and the Service Book of the petitioner was also opened.

4. Learned counsel for the petitioner submits that in terms of the seniority list (Annexure-H to the counter affidavit), the petitioner was erroneously placed at Serial No. 76 showing his date of birth as 14.05.1967 instead of the correct date being 14.05.1957, according to which he ought to have been placed at Serial No. 12 thereof. This led to the petitioner being left out of the recommendation



list dated 28.11.2006 of 59 persons prepared for the purpose of adjustment of the employees on the newly created 66 sanctioned posts allotted to the Public Health Division, Muzaffarpur (Annexure-I to the counter affidavit), and pursuant to which appointments were made in terms of office order no. 111 dated 11.12.2006 (Annexure-6).

5. The case of the petitioner is that he was regularized much later in terms of office order no. 112 dated 20.06.2014 (Annexure-7) wherein his name appeared at Serial No. 131 of the list with the corrected date of birth shown as 15.05.1957, having been appointed on 01.02.1988 in the work charge establishment. It is therefore submitted that if his date of birth had been correctly entered, the petitioner would have been absorbed in the regular establishment along with other similarly situated persons as far back as on 11.12.2006 itself. He thus claims all consequential benefits from that date which have been denied for no fault on his part.

6. Learned counsel for the petitioner further claims the benefit of pay protection, ACP etc. with reference to the period during which he was working in the work charge establishment.

7. Learned counsel for the respondents appears and has been heard.

8. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. The petitioner was denied the benefit of absorption in the year 2006 by



reason of wrong entry of his date of birth as 14.05.1967 which was however subsequently corrected as 14.05.1957. Such error was not attributable to the petitioner. Other similarly situated persons junior to the petitioner have been granted the benefit of absorption and consequential benefits from 11.12.2006 and there is no reason why the same should be withheld from the petitioner for no fault on his part. As regards the petitioner's claim for counting his service by including the period of service in the work charge establishment, the same is also admissible in view of the judgment of a co-ordinate Bench of this Court in C.W.J.C. No. 7178 of 2010 (*Ram Krishna Tanti vs. The State of Bihar & Ors.*) which has been upheld in LPA No. 409 of 2012 (*The State of Bihar & Ors. vs. Ram Krishna Tanti along with analogous cases*), observing as follows —

“..... It is not the case of the State that the writ petitioners were recruited after 1990 rather the writ petitioners' case, which remains unrebutted, is that they were recruited on daily wages in 1980 and in work-charge-establishment in 1988. By Government order, they were regularized in service in the year 2006. These being the facts, we fail to appreciate how and why their past services cannot be looked into. Our attention has also been drawn to the Bihar State Employees Conditions of Service (“Assured Career Progression Scheme”) Rules, 2003 wherein there is specific provision under Rule 4, Explanation 3 (ii a) which clearly predicates that the tenure of service as work-charge-establishment shall be counted for ACP, for employees who have been regularized from work-charge-establishment. Petitioners' case clearly falls within that. Thus, if the writ



petitioners are considered as continuing employees for the purposes of GPF, ACP, they had been receiving remuneration from the State prior to their regularization, we are of the view that the learned Single Judge did not err in allowing the writ petition in the terms as was done.”

9. A similar view has been expressed in C.W.J.C. No. 16448 of 2011 (*Bishwa Ranjan vs. The State of Bihar & Ors.*).

10. In the above view of the matter, the writ petition stands allowed with a direction to the respondents to grant the benefit of absorption of service of the petitioner with effect from 29.11.2006 when similarly situated persons junior to the petitioner have been absorbed, with all consequential benefits. It is further directed that the respondents shall also consider the past services of the petitioner since 01.02.1988 rendered under the work charge establishment for the purposes of seniority, pay scale etc. The respondents are directed to pass consequential orders pursuant to the present judgment within a period of three months from the date of receipt/production of a copy of this judgment.

11. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29.08.2017



Transmission Date	N.A.
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