

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18767 of 2008

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Devendra Kumar Bharti, S/o Rajeshwar Bharti, R/o Village Godna Sheopuri
Revilganj, P.O. Revilganj, Dist. Saran, at present Jeep Driver, Office of the
Director, Scientific Quality Control Division No.4, Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Water Resources Department, Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Siwan, Dist. Siwan.
4. The Superintending Engineer Design, Planning and Quality Control Circle,
Siwan, Dist. Siwan.
5. The Deputy Director (Scientific) Quality Control Division No.4 Siwan, Dist.
Siwan.
6. The Executive Engineer, Design, Planning and Quality Control Division No.4,
Siwan, Irrigation Department, District Siwan.
7. Deputy Secretary, Personal and Administrative Reforms Department,
Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tara Nath Jha, Adv.

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-11-2017

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

This writ application has been filed for quashing the
Memo No. 1487 of 2007 Ka 6341 dated 22.9.2008 by which the claim
of the petitioner has been rejected.

From the records, it appears that the petitioner has been
working since 1.10.1980 as a Driver in the office of Deputy Director
(Scientific) Quality Control Division No.4, Siwan which is the part of
Water Resources Department, time to time, the recommendations



were made in favour of the petitioner for regularization as he was the only person driving the vehicle, there was no other than the petitioner handling the jeep which was assigned to him. After the judgment passed by the Hon'ble Court in the case of *Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.* reported in (2006) 4 SCC 1, large number of persons have approached this Court in C.W.J.C. No. 6504 of 2000 making prayer for regularization and, in pursuance of that order, the Three Men Committee was constituted for considering with regard to nature of the appointment as in paragraph no.53 of the judgment, in the case of irregular appointment having the person discharged the work for 10 years, a direction was given by the Hon'ble Apex Court to do the one time exercise for the purpose of regularization of the employees whose appointment was irregular, not illegal. In that exercise, the order was passed by this Court and, in pursuance thereof, the Government has constituted a Two Men Committee, one Secretary, Personal and Service Department and another Project Director, Bihar Education Project Council, they deliberated the case of the petitioner, did not give recommendation in his favour. From reading of that proceeding, it appears that for the purpose of identifying the claim of the petitioner, the Committee had issued a check slip, and the Department had to supply the facts as per the check slip, reflects that the check slip, as mentioned, the petitioner



had worked since 1.10.1980 i.e. for 37 years but, further recorded about vacant and sanctioned post, the Committee has given its finding against the petitioner on the ground that the Department did not furnish the material as to whether the petitioner was appointed on the sanctioned and vacant post but the fact remains that petitioner was only driver driving the jeep for last 37 years.

Furnishing the details was the duty primarily of the Department, if the Department has failed to supply the material, the responsibility cannot be attached to the employee who is begging for his regularization and that too is working since last 37 years. If the person has been working for last 37 years and there was/is no other driver to drive the jeep, natural presumption is that jeep was there, the driver was required to drive and without driver, the jeep cannot be plied.

In the counter affidavit, though it has been stated that there was no sanctioned post but, has not denied the fact that the petitioner has been working since 37 years, no another person was discharging the duty of driver whereas every document suggests that the petitioner was the only person driving the jeep and even then the case of the petitioner was rejected on the ground of laches on the post of the Department. It is well known principle that any lacuna in the order cannot be filled up by supplying additional fact in the counter



affidavit. Reference in this connection made to the judgment passed in the case of *Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.* reported in *AIR 1978 SC 851*.

In view of the above, the reason assigned by the Committee is not sustainable and the same is quashed. The matter is remanded back for fresh consideration with a direction that the Committee will consider about the period of work done by the petitioner, whether any person other than the petitioner was driving the jeep or whether there is any allegation made against the petitioner. If the answer comes in favour of the petitioner, certainly he is entitled to the benefit of regularization. This Court directs that all process must be completed within a period of one month from the date of receipt/production of a copy of this order.

If the petitioner has been discharging the duty, long line of judgments favour for minimum scale of pay and that should be paid to the petitioner till regularization.

With the aforementioned observation and direction, this application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2017
Transmission Date	NA

