

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16115 of 2014

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1. Nand Kishore Sharma (Road Roller Driver, R.W.D., Supaul Division), Son of Late Jai Narain Sharma, Resident of Village+ Post- Gualpara, District- Madhepura
 2. Prakash Singh (Road Roller Khalashi, R.W.D., Supaul Division), Son of Late Mulri Prasad Singh, Resident of Village- Ram Nagar Khawn, Alamnagar, District- Madhepura
 3. Md. Kasim (Road Roller Driver, R.W.D., Supaul Division), Son of late Md. Nawab Ali, Gangjala Fakir Tola, District- Saharsa
 4. Laliteshwar Kunwar, (Godown Manager, R.W.D., Supaul Division), Son of Kailash Kunwar, Resident of Village + Post- Vaishi, Karjain Bazar, District- Supaul
 5. Bishambhar Prasad Gupta (Jeep Driver, R.W.D., Supaul Division), Son of late Baldev Prasad Gupta, Resident of Village+ Post- Pathra, District- Supaul
 6. Ful Kumar Roy (Road Roller Driver, R.W.D., Supaul Division), Son of Basudev Roy, Resident of Baghwa, Post- Gopalpur, District- Saharsa
 7. Rameshwar Paswan (Road Roller Khalashi, R.W.D., Supaul Division), Son of late Sita Ram Paswan, Resident of Hridaynagar, District- Supaul
 8. Raj Kumar Gupta, (Road Roller Khalashi, R.W.D., Supaul Division), Son of late Narsingh Prasad Sah, Resident of Simrahi Bazar, Post- Raghapur, District- Supaul
 9. Anant Kumar Singh (Road Roller Driver, R.W.D., Supaul Division), Son of late Tilak Dhari Singh, Resident of Village- Ratanpur, Post- Manikpur, District- Bhagalpur
 10. Manoj Kumar Mandal (Godown Watchman, R.W.D., Supaul Division), Son of Soti Mandal, Resident of Ram Nagar Khawn, District- Madhepura
 11. Dinesh Kumar (Road Roller Khalashi, R.W.D., Supaul Division), Son of late Ram Kesho Prasad, Resident of Village- Jadua, Post- Hazipur, District- Vaishali
 12. Parmanand Singh (Karya Darshak.work Watchman, R.W.D., Saharsa Division), Son of Late Janeshwar Singh, Resident of village + Post- Arraha, District- Madhepura
 13. Basant Sah (Road Roller Driver, R.W.D., Ssaharsa Division), Son of late Jilebi Singh, Resident of village- Lahuar, Post- Saroni, District- Saharsa
 14. Sanjeev Kumar (Road Roller Driver, R.W.D., Madhepura Division), Son of late Dashrath Prasad Yadav, Resident of village- Nawada Gopalpur, Post- Gopalpur, District- Banka
 15. Md. Immamuddin (Road Roller Driver, R.W.D., Madhepura Division), Son of late Md. Anishuddin, Resident of Village + Post- Patarghat, District- Saharsa
 16. Vidyanand Yadav (Road Roller Driver, R.W.D., Madhepura Division), Son of Late Satya Narain Yadav, Resident of Ward No. 23, District- Madhepura
 17. Gopal Prasad (Jeep Driver, R.W.D., Madhepura Division), Son of Vir Narain Prasad, Resident of village + Post- Sarna, District- Bhojpur **Petitioners**

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna
4. The Principal Secretary, Finance Department, Government of Bihar, Patna
5. The Principal Secretary, Rural Works Department, Government of Bihar, Patna
6. Under Secretary, Finance Department, Government of Bihar, Patna
7. Deputy Secretary, Rural Works Department, Government of Bihar, Patna
8. The Engineer-in-chief, Rural Works Department, Government of Bihar, Patna
9. The Executive Engineer, Rural Works Department, Supaul Division.



10. The Executive Engineer, Rural Works Department, Saharsa Division, Saharsa.
11. The Executive Engineer, Rural Works Department, Madhepura Division,
Madhepura

.... Respondents

Appearance :

For the Petitioners : Mr. Y.V.Giri, Senior Advocate and
Mr. Pranav Kumar, Advocate

For the Respondents : Mr. Ashish Kumar Lal, AC to GA 5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 22-12-2017

The writ petition has been filed for quashing (a) order dated 28.7.2014, passed by the Executive Engineer, Work Division Supaul, Rural Works Department, Government of Bihar, Patna (b) order dated 30.7.2014, passed by the Superintending Engineer, Saharsa Circle, Rural Works Department and (c) order dated 25.7.2014, passed by the Executive Engineer, Work Division, Madhepura, Rural Works Department, whereby services of the petitioners have been terminated on the basis of the office order issued by the Rural Works Department dated 30.6.2014 bearing Memo no. 7419 as also on the basis of office order issued by the same Department dated 31.1.2014 vide memo no. 12473 resolving that the services of the petitioners are no longer required. Further, prayer has been made by the petitioners for direction to the respondents to take over the services of the petitioners as regular permanent employees in the establishment of the Rural Works Department with all consequential benefits and for quashing of order dated 31.1.2014 and 30.6.2014 on the basis of which the services of the petitioners have been terminated.

2. Learned Senior Counsel for the petitioners has contended that after the engagement of the petitioners on daily wages basis between the period 13.1.1983 to 1.9.1989 in the Works Division including the Rural Works Division, they were working on daily wages basis. He submits that by Annexure 1 series all the petitioners have been



absorbed/regularized with effect from different dates between June to December, 1992. Relying on Annexure 3 which is the guidelines issued by the Finance Department, Government of Bihar dated 4.2.1949 relating to conditions of service of the members of the works charge establishment. He submits that petitioners have stood included in the permanent establishment as permanent Government employees. Such submission has been made in light of the observations made in the order and judgment dated 1.11.2006, passed in LPA No. 836 of 1997 and other analogous cases (Annexure 6) of the writ petition. Relevant extract of which is being reproduced herein below:-

“ In view of the said notification published on 26th April, 1950 the revised condition service of work charge establishment as decided by the Government on 4th February, 1949 became legislative service rules pertaining to the employees of the work charge establishment of the Government. As a result of such decision of the Government, which has not yet been cancelled or repealed by any enactment made by the legislature of the State, an employee working in the work charge establishment for a period of more than one year is deemed to have become a member of the permanent establishment of the State Government.”

3. Learned senior counsel for the petitioners further submits that becoming members of the permanent establishment is further evident from Annexure 2 series, which is a chart submitted by the Executive Engineers of Supaul, Saharsa and Madhepura Rural works Division to the Engineer-in-chief, Rural Works Department, Government of Bihar, Patna, wherein the date of engagement on daily wage basis and date of absorption as permanent employee has been submitted.

4. It is the submission on behalf of the petitioners that their becoming members of the permanent establishment, as aforesaid, has been specifically saved by the Notification No. 10709 dated



17.10.2013 (Annexure 8 of the writ petition), issued by the Finance Department, Government of Bihar.

5. In view of the submissions as above, petitioners claim that the orders purporting to terminate their services on the ground that they have been given temporary status as work charged employee after the cut off date, i.e. 11.12.1990, fixed for the purpose of regularization is unsustainable and illegal.

6. One [I.A.No. 3987](#) of 2015 has also been filed in the instant proceedings challenging the individual orders of the termination of the petitioners during pendency of the writ petition. Petitioners' claim is that they have a vested right to continue as members of the permanent establishment and the same cannot be taken away by the effect of Annexure C of the counter affidavit, i.e., the resolution dated 17.10.2013, issued by the Finance Department of the Government of Bihar. In support of the submission, the petitioners rely on the decision rendered in the case of **J.S.Yadav Vs. State of Uttar Pradesh and another**, reported in **2011(6) SCC 570**.

7. Petitioners also submit that the resolution provides for regularization of employees working in the work charge establishment whose appointment has been done in the works charge establishment on or before 11.12.1990 and whose services have been found to be continuous and satisfactory. Petitioners who have been removed from the work charge establishment in compliance of Clause (8) of the same resolution are in fact not covered by the same as prior to the issuance of the resolution no. 10710 dated 17.10.2013 (Annexure C) they have become members of the permanent establishment.

8. Learned counsel for the State has opposed the case of the petitioners. Placing Annexure 1 series, he contends that by the same the petitioners have been placed in the works charge establishment



on purely temporary basis with effect from the different dates mentioned therein with respect to the different petitioners which is in between June to December, 1992.

9. Giving the relevant background he submits that the Government had taken a decision by resolution dated 23.10.1987, providing for regularization of such works charge employees, who had completed five years of services on 21.10.1984. The same put a restriction on any new appointment in the works charge establishment in the future. He further submits that taking a lenient view of the issue, the State Government issued a resolution bearing No. 10710 dated 17.10.2013 (Annexure C) of the counter affidavit filed by respondents no. 4 and 6 extending the cut off date to 11.12.1990. It is in this resolution that it was specifically resolved that such employees who have been appointed in the works charge establishment after 11.12.1990, such as the petitioners, their services should be terminated as the same was not required. It also provides that the officials, responsible for making such appointment in the work charge establishment of employees after 11.12.1990, should be subject to the disciplinary proceedings. He submits that it is obvious that petitioners' appointments in the works charge establishment purely on temporary basis was made by Annexure 1 series in between June to December, 1992, i.e., much after the cut off date 11.12.1990. Thus the case of the petitioners was covered by Clause 8 of the resolution (Annexure C) under which they were liable to be removed from the work charge establishment.

10. As regards other submissions made on behalf of the petitioners regarding their appointment in the permanent establishment by effect of the Guidelines of 1949 (Annexure 3) read with the notification (Annexure 8), he submits that reliance on the judgment in the case of **Kosi Project Workers Association Vs. State of Bihar and others**, reported in **2007(1) PLJR 358** (Annexure 6) is misplaced. It is



submitted that the issue has been considered in detail subsequently in the case of **State of Bihar and others Vs. Bimli Devi**, reported in **2016(1) PLJR 452**, wherein it has been observed that the decision in the case of **Kosi Project Workers Association Vs. State of Bihar and others** was without noticing the previous decision in the case of **Most Roopkali Kuer Vs. State of Bihar**, reported in **2006(1) PLJR 323**. The same observation has been made therein with reference to the aforesaid guidelines, 1949 on which the petitioners have based their claim. Relevant extract of the judgment contained in paragraphs 21, 22, 28 and 29 of the case of the **State of Bihar and others Vs. Bimli Devi** (Supra), is being reproduced herein:-

*“21. We further notice that in the case of **Koshi Project Workers Association vs. state of Bihar** [2007 (1) PLJR 358], the Division Bench, without noticing the previous decision of a Division Bench of this Court in the case of **Roopkali Kuer vrs. State of Bihar**, held, in paragraph 8, as follows:-*

" 8. On the 4th December, 1949 the State Government incorporated in PWD Code Volume-1, the condition of work-charge establishment and thereby provided, amongst others, that the post of work-charge establishment which are of permanent nature, i.e. required for 12 months in a year and for long and indefinite period, will be made permanent and included in the permanent establishment and men employed on these posts, having one year's approved service will be included amongst permanent Government employees."

*22. Later on, however, a Full Bench of this Court, in the case of **Durganand Jha & Ors. vs. State of Bihar & Ors.** [2007 (4) PLJR 259], had the occasion to determine and distinguish the status of the employees working in a work charged establishment vis-à-vis regular employment of the State Government. The Full Bench held, in paragraphs 14 to 16, as follows:-*

"14. Employees of Work charged Establishment have separate entity and status than that of the regular establishment. Their regularization/promotion in the regular establishment, therefore, would be wholly without jurisdiction and violative of Articles 14 and 16 of



the Constitution.

15. There is great difference between Work charged Establishment and permanent establishment of the State. The permanent establishment has status of permanency and will continue for ever, whereas the Work charged Establishment is created for a temporary purpose to complete a particular work, for which the establishment has been made.

16. Accordingly, a person engaged to discharge the duty of Work charged Establishment will cease to be an employee no sooner the work of that establishment would come to an end. Obviously, therefore, their rights and status are fundamentally different."

*28. In view of the decision of Division Bench, this Court in **Most. Roopkali Kuer** (supra) and subsequent Full Bench decision of this Court in **Durganand Jha** (supra), we are of the considered opinion that there cannot be automatic induction of an employee of a work charged establishment into a regular establishment. The view, taken by the learned Single Judge in case of **Baby Devi** (supra), is based on reasoning given in the case of **Shambhu Sharan Singh** (supra) without noticing the fact that the decision, in the case of **Shambhu Sharan Singh** (supra), stood already over-ruled, later on, by the Division Bench in the case of **Roopkali Kuer** (supra).*

*29. We are also of the view that the decision of the Division Bench of this Court, in case of **Roopkali Kuer** (supra), was not brought to the notice of the Division Bench in **Koshi Project Workers Association vs. State of Bihar**, reported in 2007 (1) PLJR 358. It is settled rule of precedence that in case of two conflicting decisions of Co-ordinate Bench, previous decision would be binding if the subsequent of Co-ordinate Bench has failed to notice the previous Co-ordinate Bench decision. Further, in view of the later Full Bench decision in the case of **Durganand Jha & Ors. Vs. State of Bihar** (supra), there can be no question of automatic absorption/regularization.*

11. Having considered the rival submissions this Court finds that in the light of the said decision in the case of the **State of Bihar Vs. Bimli Devi** (Supra) petitioners cannot be permitted to derive any



sustenance from the guidelines of 1949 (Annexure 3) or from Annexure 8 of the writ petition.

12. On going through the Annexure 1 series this Court finds that by the same the petitioners have not been absorbed/regularized. Annexure 1 series is apparently office orders placing the various petitioners in the work charge establishment with effect from June to December, 1992 i.e., much after the cut off date 11.12.1990. Annexure 2 series which has also been relied upon by the petitioners does not support their case of having been regularized/absorbed. Annexure 2 series is a format for a different purpose. From perusal of the top of the said format it is quite evident that the same is for forwarding the detailed report in respect of such **daily wages employees** who have been appointed prior to the cut off date, i.e., 11.12.1990 for consideration of their absorption/regularization. The same appears to have been forwarded by the Executive Engineers of Supaul, Saharsa and Madhepura Rural Works Department to the Engineer in chief in December, 2013. From perusal of clause (5) of the said format it is apparent that all the petitioners have been placed in the work charge establishment in between June to December, 1992, after the cut off date, i.e., 11.12.1990. The same does not in any way even suggest that the petitioners have become regular/permanent employees of the permanent establishment. Thus the submissions made on behalf of the petitioners with reference to Annexure 2 series are also unsustainable. Neither Annexure 1 nor Annexure 2 has created any right whatsoever in favour of the petitioners to continue as members of the permanent establishment. Reliance by the petitioners on the decision in case of **J.S.Yadav Vs. State of Uttar Pradesh and another** (spura) is therefore misplaced. Since petitioners have never been appointed in the permanent establishment as regular employees, there can be no question of taking away the vested right to continue as permanent employee.



13. The case of the petitioners, on the other hand, falls under Clause (8) of the Resolution no. 10710 (Annexure C of the counter affidavit) which provides for removal of employees such as the petitioners who have been placed in the work charge establishment subsequent to the cut off date, i.e., 11.12.1990.

14. Some other submissions made on behalf of the petitioners are that the cut off date, i.e., 11.12.1990 is arbitrary and discriminatory. State counsel, on the other hand, has submitted the rational behind the said date, which is being uniformly applied in respect of employees of work charge establishment. He submits that the said date has been fixed so as to maintain parity with the cut off date fixed for regularization of employees on daily wages basis vide resolution no. 489 dated 10.5.2005, wherein the same date has been fixed as cut off date. Such stand of the State with respect to the cut off date cannot be said to be illegal or discriminatory.

15. Learned senior counsel for the petitioners also submits that the case of the **State of Bihar and others Vs. Bimli Devi** (supra) relied upon by the State Government is not applicable in the instant case. He submits that the decision is a law in respect of the issue which has been decided relying upon the decision in the case of **Uttar Pradesh State Road Transport Corporation Vs. Assistant Commissioner of Police (Traffic), Delhi**, reported in (2009)3 SCC 634 and **Babu Prakash Kaikadi (Dead) by LRS Vs. Babu (Dead) through LRS**, reported in (2004)1 SCC 681. He submits that the facts in the case of the petitioners distinguishes his case from the decision rendered in the case of **Bihar State and others Vs. Bimli Devi** (supra). The said submission is rejected. As noticed above, the decision in the case of **the State of Bihar Vs. Bimli Devi** (spura) has taken into consideration the guidelines of 1949 and the various decisions on the issues raised by the petitioners and has finally held that there can be no automatic absorption/regularization of work



charge employees.

16. Another submission of the petitioners was that on the ground of equity they may be allowed to continue and be considered for regularization of their services. In support of the submissions, learned senior counsel for the petitioners has placed reliance on the decision in the case of **Ramesh Chandra Sankla and others Vs. Vikram Cement and others and other analogous cases**, reported in (2008) 14 SCC 58. On going through the judgment and more specifically paragraphs 97 and 98 thereof this Court finds that the concept of equity has been explained as discretionary and required to be exercised in larger interest of justice, the Hon'ble Apex court has held as follows:-

*“98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in **Shiv Shankar Dal Mills v. State of Haryana**, (1980) 1 SCR 1170, Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.”*

17. The petitioners staking their claim for regularization/absorption, as employees in the permanent establishment, on the basis of their placement in the work charge establishment two years after the cut off date prescribed for the same cannot be permitted to invoke equity. Such claim is directly in violation of the uniform policy of the Government with regard to regularization of work charged employees as indicated above. The facts of the case do not have any scope to invoke equity in favour of the petitioners.



18. Having considered the rival submissions and in view of the findings recorded above, the writ petition is dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
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