

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2138 of 2016
IN
Civil Writ Jurisdiction Case No. 6299 of 2014**

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1. The State of Bihar, through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Nirman Bhawan Campus, Bailey Road, Patna.
 2. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Nirman Bhawan Campus, Bailey Road, Patna.
 3. The Engineer-in-Chief-cum- Special Secretary, Public Health Engineering Department, Muzaffarpur.
 4. The Regional Chief Engineer, Public Health Engineering Department, Muzaffarpur.
 5. The Executive Engineer, Public Health Engineering Division, Dhaka, East Champaran.

.... Appellant/s

Versus

Raj Kumar Yadav, Son of Sri Deo Narayan Yadav, Resident of Village-Dhobiyahi, P.O.-Vijiyatola Bela Singar Mositola Dhobiya, Via- Nirmali, P.s.- Nirmali, District- Supaul.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Madhaw Prasad Yadav, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-01-2018

Ref.: I. A. No. 8943 of 2016

The present interlocutory application has been filed for condoning the delay of 149 days in filing the appeal.

2. For the reasons mentioned in the interlocutory application, I.A. No. 8943 of 2016 is allowed and the delay in filing the appeal is condoned.

3. This is an appeal filed by the State Government



calling in question tenability of order dated 25.04.2016 passed by the writ court in C.W.J.C. No. 6299 of 2014.

4. Writ petitioner along with six other persons approached this Court challenging their disengagement as Chowkidar brought into force with effect from 22.01.2014. Even though the petitioner was found to have been engaged in the Work-charged Establishment w.e.f.17.01.1991, he has been denied regularization on the ground that his appointment was after cut-off date 18.01.1991, whereas in the case of other six similarly situated persons, who also visited this Court in C.W.J.C. No. 5509 of 2002 along with the petitioner, they have been reinstated and granted the benefit only on account of the fact that they were appointed vide letter dated 31.12.1990 before the cut-off date. The learned Writ Court examined the issue and found that the petitioner was also engaged much earlier, but merely because of the hyper technical view of the State Government, he is denied similar benefit like the other employees, who are appointed few days before the petitioner. The learned Writ Court found that there has been discrimination in the matter and granted relief to the petitioner.

5. In doing so, we are of the considered view that the learned Writ Court has not committed any error. We find that the petitioner was initially engaged as Chowkidar in work-charged



establishment on daily wage basis along with 8 persons and when the other 8 persons have been granted the benefit, merely on the hyper technical ground of engagement of the petitioner after a few days of the cut-off date the benefit could not be denied taking note of the fact that he was engaged as daily wages employee and the employer initially had done in the case of other seven employees before bringing them into the work-charged establishment. The learned Writ Court having analyzed all these factors and having issued the direction, the State Government as a model employer should have implemented the same, as was done in the case of other six employees.

6. Accordingly taking note of the totality of the facts and circumstances, we see no reason to make any indulgence into the matter.

7. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	.01.2018
Transmission Date	NA

