

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20170 of 2016

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Umesh Mandal, Son of Late Biranchi Mandal, Resident of Village Banshipur, P.O.-
Pacham, P.S.- Chanan, District - Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Department of Public Health Engineering, Bihar, Patna.
4. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Purnea.
6. The Executive Engineer, Public Health Engineering Division, Araria.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 4855 of 2017

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Md. Abdul Karim, S/o Late Shekh Naziruddin, R/o Village + P.O.- Duba, P.S.-
Jokihat, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Purnea.
6. The Executive Engineer, Public Health Engineering Division, Araria, District- Araria.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 12030 of 2017

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Dinesh Kumar Singh, Son of Late Shivji Singh, R/o Village- Sarai Dhanesh, P.O.-
Deshri, P.S.- Sahdei Bujurg, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in- Chief, Public Health Engineering Department, Govt. of Bihar,



Patna.

4. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Purnea.
6. The Executive Engineer, Public Health Engineering Division, Araria, District-Araria.

.... Respondent/s

Appearance :

(In CWJC No.20170 of 2016)

For the Petitioner/s : Mr. Siyaram Pandey, Adv.

For the Respondent/s : Mr. Nagendra Pd. Yadav, SC-23

(In CWJC No.4855 of 2017)

For the Petitioner/s : Mr. Siyaram Pandey, Adv.

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-4

(In CWJC No.12030 of 2017)

For the Petitioner/s : Mr. Siyaram Pandey, Adv.

For the Respondent/s : Mr. Lalan Kumar, AC to GP-9

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-03-2018z

Heard Mr. Siyaram Pandey, learned counsel appearing for the petitioners in the 3 writ petitions which have been heard analogous. While Mr. Nagendra Prasad Yadav, learned Standing Counsel No.23 appears for the State in CWJC No.20170 of 2016, Mr. Upendra Pratap Singh, learned Assisting Counsel to Standing Counsel No.4 appears for the State in CWJC No.4855 of 2017 and Mr. Lalan Kumar, learned Assisting Counsel to Government Pleader No.9 appears for the State in CWJC No.12030 of 2017.

Since the relief claimed in all the 3 writ petitions is same and all the 3 writ petitioners serving on group 'D' post of Nalkoop Khalasi/Plumbing Mistri on daily wage under the Executive Engineer, Public Health Engineering Division, Araria have not been given the benefit of regularization despite the Circular No.639 dated



16.03.2006 when similarly placed daily wagers have been granted regularization that they are before this Court.

The irony is that not only the petitioners' case is sought to be distinguished on non-est ground, it is on a complete mis-interpretation of the circular dated 16.3.2006 that these petitioners have been removed from service under the order of the Executive Engineer, Public Health Engineer Division, Araria bearing Memo No.640 dated 18.7.2017, Memo No.641 dated 18.7.2017 and order bearing Memo No.642 dated 18.7.2017 whereby the three petitioners have been removed and copies of which have been impugned vide Annexure 12 to I.A. No.5443 of 2017 in CWJC No.20170 of 2016 in so far as petitioner Umesh Mandal is concerned, Annexure 11 to IA No.5535 of 2017 in CWJC No.4855 of 2017 in so far as petitioner Md. Abdul Karim is concerned and Annexure 13 to CWJC No.12030 of 2017 whereby the petitioner Dinesh Kumar Singh has been terminated. While the termination of the petitioners Umesh Mandal and Md. Abdul Karim has taken place during the pendency of the writ petition, in so far as petitioner Dinesh Kumar Singh is concerned, he has come before this Court feeling aggrieved by the order of termination.

In the nature of dispute that engages this Court the petitioners are permitted to question their respective termination order in their respective writ petitions. As a consequence the



interlocutory applications referred to above are allowed.

Since the issue raised and the relief sought is common in all 3 writ petitions hence I would be referring to the pleadings made in CWJC No.20170 of 2016 for the sake of convenience unless specified with specific reference to any other writ petition.

The facts of the case lie in a very narrow compass. While the petitioner Umesh Mandal is in service of the respondents since 10.12.1982 as a Nalkoop Khalasi, the petitioner Md. Abdul Karim is working in the same capacity since 8.3.1983 and petitioner Dinesh Kumar Singh is working as a Plumbing Mistri since 18.12.1983 and there is no dispute. It is also not in dispute that the petitioners have continuously served the respondent until they have been terminated vide order(s) referred to above, on complete misconception of the legal position as well as the right vested to these petitioners to claim such relief under circular no.639 dated 16.3.2006.

In fact appreciating such position that a panel of 46 such daily wagers was prepared for the purpose of regularization in the light of the stipulation present in Circular No.639 dated 16.3.2006 as admitted by the respondents in their counter affidavit filed by the Executive Engineer more particularly paragraph 7 which also encloses a list at Annexure R/6 which is a letter of the Executive Engineer, Public Health Engineering Division, Araria addressed to the Superintending Engineer, Public Health Engineer Circle, Purnea



dated 1.11.2006 which accompanies the list and which clearly mentions that it contains the names of daily wagers who are entitled for regularization. Such is the subject of the letter. Of the 46 daily wagers whose names were recommended and which included the petitioner Umesh Mandal at serial no.41, Md. Abdul Karim at serial no.33 and petitioner Dinesh Kumar Singh at serial no.45, 43 were regularized leaving out these 3 petitioners and the reasons assigned at paragraph 7 are preposterous for it mentions that these petitioners were below in the merit list. Even though the list was only of 46 daily-wagers and of whom 43 had been regularized, some of whom including Madan Choudhary whose name appears at serial no.46 had been regularized yet the Executive Engineer mentioned that the name of the petitioner was below the merit list. There is no other reason assigned. It is clear that the petitioners have been subjected to unnecessary litigation plainly because of lack of understanding or harassing attitude of the respondent authorities in the Public Health Engineering Department.

Learned counsel for the petitioners has invited the attention of this Court to the sanctioned post available with the department, a copy of which is at Annexure 2 to submit that there were posts available for regularization of these petitioners yet they have been denied benefit, for reasons which are not sustainable.

Learned counsel for the petitioners is right in his submission



because no other reason has been assigned by the respondents to deny these petitioners the regularization either on vacancy or sanctioned post or their eligibility criteria. In other words no comment has been offered by the respondents as to the reasons for denial either for want of sanction post or eligibility condition.

It is unfortunate while the other daily-wagers have been given regularization since 2006, these petitioners have been made to run around and ultimately have been terminated. The action of the present kind has rendered the State Litigation Policy redundant and it is about time that the Chief Secretary has a serious thought over it. Litigations have unwarrantedly been generated subjecting these petitioners to mental, physical and financial harassment. I fail to understand the action of the respondents especially where there is nothing in the counter affidavit to deny the claim of regularization to these petitioners who are fully covered under the circular dated 16.3.2006. The denial is arbitrary and the action is discriminatory.

Accordingly the respondents more particularly the respondent nos.3 to 6 are directed to pass appropriate orders for regularizing the services of these petitioners with effect from the date the other 43 panelists at Annexure R/6 have been regularized and such order be issued within a period of six weeks from the date of receipt/production of a copy of this judgment. These petitioners would also be entitled to all consequential benefits arising therefrom



including continuity, back wages etc.

As a consequence the order of termination bearing Memo No.640 dated 18.7.2017 at Annexure 12 to I.A. No.5443 of 2017 in CWJC No.20170 of 2016, Memo No.641 dated 18.7.2017 impugned at Annexure 11 to IA No.5535 of 2017 in CWJC No.4855 of 2017 and Memo No.642 dated 18.7.2017 impugned at Annexure 13 to CWJC No.12030 of 2017 respectively are quashed and set aside.

The three writ petitions are allowed with the direction(s) aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29-03-2018
Transmission Date	NA

