

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.763 of 2015

- =====
1. Tarkeshwar Thakur Son of Late Ram Sakal Thakur Resident of Q. No. TG-22, Workman Colony, P.O. Bhimnagar, P.S. Birpur, District Supaul at present working as Compilation Clerk, Irrigation Mechanical Division, Birpur, Supaul.
 2. Arun Kumar Bhattacharya Son of Late Samar Chandra Bhattacharya Resident of Q.No. WTRB - 32, P.O. Bhimnagar, P.S. Birpur, District Supaul at present working as Helper, Irrigation Mechanical Division, Birpur, Supaul
- Petitioners

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Govt. of Bihar, Patna.
 2. The Joint Secretary, Water Resource Department, Patna, Bihar.
 3. The Chief Engineer, Mechanical, Water Resource Department, Bihar, Patna.
 4. The Superintending Engineer, Irrigation Mechanical Circle, Birpur, Supaul.
 5. The Executive Engineer, Irrigation Mechanical Division, Birpur, Supaul.
- Respondents
- =====

Appearance :

For the Petitioners : Mr. Sanjeev Kumar Singh, Advocate
For the Respondents : Mr. Manish Kumar, GP 8

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 19-02-2018

Heard counsel for the petitioners and the State.

2. Petitioners pray for quashing the decision contained in Memo no. 1621 dated 26.9.2014 (Annexure 8), by which their claim for regularization in services has been rejected.

3. It is the case of the petitioners that they have been working on the daily wage basis as Compilation clerk and Assistant (helper) respectively since 1982 and 1981. It is submitted that pursuant to certain orders passed in their favour in the proceedings the respondents by letter dated 8.2.1990 (Annexure 3) issued under the signature of the Under Secretary, Water Resource Department, Government of Bihar took a decision to place the service of the



petitioners in the work charge establishment ignoring their earlier retrenchment. Pursuant to the said decision of February, 1990 the petitioners' services were placed in the work charged establishment by order dated 22.12.1990. It appears that the respondents took more than ten months in issuing said order dated 22.12.1990. However, for the delay of respondents in giving effect to their decision for placing the petitioners in the work charged establishment, the petitioners have now been sought to be penalized on the ground of non consideration of their case for regularization by assigning reason that their appointment has been made on 26.12.1990, i.e., after the cut off date of 11.12.1990 fixed by Notification no. 10710 dated 17.10.2013.

4. Prima facie this decision of the respondent authorities which is challenged in the instant writ petition is unsustainable in law as on account of inaction on the part of the respondents in giving effect to their decision dated 8.2.1990 (Annexure 3) for placing the petitioners in the work charged establishment, the petitioners cannot be made to suffer. Counsel for the petitioners submits that the Screening committee of the department vide its meeting dated 22.9.2014 directed for regularization of twenty seven persons for regularization. Considering the aforesaid situation, this Court vide order dated 17.1.2018 had made query as to why the persons who were appointed in the work charged establishment



much later to the petitioners and in any case after the cut off date being 11.12.1990 have been regularized but the petitioners have been denied regularization.

5. Supplementary counter affidavit has been filed on behalf of respondents no. 1 to 5 in which it has been stated that the services of such work charged employees were regularized on direction of the High court.

6. As noticed above, petitioners are not in any way responsible for the delay in giving effect to the decision of the respondents for placing the petitioners in the work charged establishment, as a result of which they have missed the cut off date by 11 days. Even though the decision to place them in the work charged establishment has been taken on 8.2.1990, they have been placed in the work charged establishment with effect from 22.12.1990. In the aforesaid situation and since others who had been placed in the work charged establishment much later than the petitioners, have already been regularized in service, this Court would quash the decision of the respondents authorities dated 26.9.2014 (Annexure 8) rejecting petitioners' claim for regularization by assigning the reason that they have been placed in the work charged establishment subsequent to the cut off dated being 11.12.1990. In view of the quashing of the said order, this Court directs respondents authorities to consider petitioners' claim



for regularization. While doing so, respondents will have due regard to the fact that the decision to place the petitioners in the work charged establishment has been taken on 8.2.1990, i.e., much before the cut off date. Petitioners should not be made to suffer for the delay caused on the part of the respondents in giving effect to their said decision by issuing the order dated 22.12.1990 placing the petitioners in the work charged establishment 11 days after the cut off date, i.e., 11.12.1990.

7. The decision has to be taken by the Chief Engineer, Mechanical, Water Resource Department, Bihar, Patna (respondent no.3) since petitioners were working in the office of the Executive Engineer, Mechanical Division, Birpur, Supaul. Let the decision be taken by the authorities in the light of the observations and directions made above, within a period of three months from the date of receipt/production of a copy of this order.

8. The writ petition is thus allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	23.2.2018
Transmission Date	NA

