

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2427 of 2016

- =====
1. Gopal Prasad Gupta Son of Sri Surendra Prasad Gupta Resident of Mohalla - Ram Nagar Balmi, Phulwari - Sharif, Near Govindpur, Police Station - Phulwari Sharif, District - Patna
 2. Nawal Kishore Gautam Son of Late Raj Nandan Singh Resident of village and Post Office - Newari, Police Station - Makhdumpur, District - Jehanabad
 3. Dasrath Prasad Sah Son of Ram Ratan Sah Resident of village and Post Office - Nagwa, Police Station - Karpi, District - Arwal
 4. Anil Kumar Singh Son of Late Dharmu Prasad Singh Resident of Village - Hariharpur, Post office - Dighari, Police Station - Kodha, District - Katihar
 5. Ram Narayan Rai Son of Jiwachh Rai Resident of village and Post office - Kadamha, via - Nirmali, Police Station - Arauna, District - Supaul
 6. Rajeshwar Raut Son of Sri Sundar Mehtar Resident of Mahananda Sibir Janta Chouk, Purnea, Police Station - Purnea, District - Purnea

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Under Secretary, Water Resources Department, Government of Bihar, Patna
3. The District Magistrate, Purnea, District Purnea
4. The Engineer - in - Chief, Water Resources Department, Government of Bihar, Patna
5. The Chief Engineer, Water Resources Department, Government of Bihar, Purnea Zone, Purnea
6. The Superintending Engineer, Water Nissaran Circle, Water Resources Department, Purnea
7. The Superintending Engineer, Mahanda Flood Control Circle, Katihar
8. Executive Engineer, Flood Control Division, Kadhagola, Katihar
9. Executive Engineer, Water Drainage Division, Purnea

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. V.R.P.Singh, Adv.
Mr. Arvind Kumar, Adv.

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

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-04-2018

Heard Mr. V.R.P.Singh, learned counsel for the petitioners
and Mr. Nagendra Prasad Yadav, learned SC-23, for the State.

Of the six petitioners, who are before this Court for the third



time seeking relief for their respective regularization/ absorption in regular service against a Class IV post, inter alia, on grounds that they are in continuous service since after their engagement in between the period 1979 to 1983 which extends over three decades, petitioner no.4 Anil Kumar Singh has reached the age of superannuation.

Considering the nature of relief prayed herein, this writ petition in so far as petitioner no.4 is concerned is rendered infructuous for no order of regularization can be passed where a master servant relationship ceases.

In so far as the remaining petitioners are concerned, the first of their exercise for this very relief was initiated more than two decades ago through C.W.J.C.No. 10660/1996 and by an interim order passed on 7.12.1998 at Annexure 1, a Co-ordinate Bench of this Court while allowing time to the respondents to file affidavit issued directions to the respondents to consider the desirability of payment of minimum scale of pay to these petitioners. This writ petition was preferred by petitioners no. 1 and 2 while other similarly approached through C.W.J.C.No. 2206/2002. It is not in dispute that in pursuance of the order passed in C.W.J.C.No. 10660/1996, the petitioners were placed at the minimum of pay scale of Class IV employees. An order to such effect is present at Annexures 2 and 3. The writ petition i.e. C.W.J.C.No. 10660/1996 was disposed of vide order passed on



28.9.2010 at Annexure 5 with a direction to the Principal Secretary, Water Resources Department to consider regularization of the petitioners therein within six months of the disposal. It is following the order passed by a Co-ordinate Bench directing the authorities to consider regularization of the petitioners that the exercise was initiated and vide Annexure 7 the then Chief Engineer, Water Resources Department, recommended the claim of the petitioners for regularization in the light of the orders passed in the respective writ petitions as well as the policy decision of the State Government in its circular No. 639 dated 16.3.2006, a copy of which is enclosed at Annexure 4. Despite the position existing and despite recommendation of the Chief Engineer at Annexure 7 and even though regularizations were taking place in Purnea Zone, yet the benefit of regularization/ absorption eluded these petitioners who continued as a daily wager albeit on a minimum scale. It is after having continued in such status for three decades or more that they have again come to this Court through this writ petition for their regularization against Class IV post. The prayer is opposed by the multiple affidavits filed in this proceedings which are only taken to be rejected because the very fact that these petitioners have continued on their respective posts for more than three decades, they are squarely protected under the resolution of the State dated 16.3.2006 and no



amount of objection can put any obstacle on the claim. In fact a poser by this Court recorded in the order dated 16.3.2018 is sought to be answered by the present Chief Engineer through the second supplementary affidavit and who has apparently given an incorrect reason for non-regularization of the petitioners in absence of vacant sanctioned post. The petitioners have continued on their respective post for three decades or more on a minimum pay scale, it is absurd to believe that there is no Class IV post available within Purnea Zone even when the petitioners have specifically pleaded in paragraph 18 and enclosed the orders of regularization of other employees. This Court is tempted to impose heavy cost on the Chief Engineer, the deponent of the 2nd supplementary affidavit in trying to find fault with the recommendation of his predecessor in office as contained in the recommendation dated 16.1.2012 at Annexure 7 and in trying to oppose the prayer by misleading statements.

Taking note of the undisputed circumstances discussed above, the stipulations in the scheme dated 16.3.2006 and the judgments of this Court reported in 2016(1) PLJR 232 (**Ashok Kumar Sharma & ors. v. the State of Bihar & ors.**) and 2016(1) PLJR 512 (**Jai Kishun Ram & ors. v. the State of Bihar & ors.**) as well as 2017(4) PLJR 352 (**Pandav Yadav & ors. v. the State of Bihar & ors.**), the objections are only taken for rejection.



Let a writ of mandamus be issued accordingly directing the appropriate authority, the Chief Engineer to forthwith issue orders of regularization of petitioners no. 1 to 3 and 5 which should be passed within a period of six weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2018
Transmission Date	NA

