

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17840 of 2009

-
1. Abhimanyu Prasad Singh s/o Late Ram Dahin Singh R/o Vill.- Darhara, P.S.- Darhara, Distt.- Munger
 2. Bishundeo Yadav s/o Late Maharaj Yadav r/o Vill.- Kumardih, P.O.- Lahariasara, Distt.- Santharpargana, At Present Residing At Vill.- Merudiara, P.O.- Herudiara, P.S.- Kasim Bazar, Distt.- Munger
 3. Yogendra Chaurasia s/o Late Mahavir Mandal r/o Vill.- Kumardiha, P.O.- Lakarmara, Distt.- Santharpargana, At Present Residing At Vill.- English Pattamn (ADARSH Pattam), P.S.- Naya Ram Nagar, Distt.- Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Cum Commissioner Public Health Engineering Department, Govt. of Bihar, Patna
3. The Chief Engineer Public Health Engineering Department, Govt. of Bihar, Patna
4. The Superintending Engineer Public Health Engineering Department, Munger Division, Distt.- Munger
5. The Executive Engineer Public Health Engineering Department, Munger Division, Munger, Distt.- Munger

... .. Respondent/s

Appearance :

For the Petitioner/s : None
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 06-04-2018

No one appears for the petitioners nor for the State.

In the present case, the prayer has been made for giving direction for implementation of the order no. 09 dated 14.2.2007 contained in Memo No. 188 dated 14.2.2007 issued by the Executive Engineer, Public Health Engineering Department, Munger, whereby and whereunder, the petitioner has been regularized with effect from 28.11.2006 whereas the claim has



been made that they should be regularized from the earlier date with effect from 11.1.1990 for petitioner no.1 and from 4.11.1992 for petitioner no.2 and for petitioner no.3, it should be from 3.5.1993 and further made a prayer that they have been granted the annual increment with effect from 1.11.2007 but, it should be from 11.1.1991, 4.11.1993 and 3.5.1994 respectively.

The petitioner no.1 was appointed as Key-Man-cum-Chaukidar (Khalasi) under the Work Charge Establishment in the scale of Rs. 155-1-160-2-190 vide office order contained in Memo No.6 dated 11.1.1980 and the petitioner no.2 was appointed on the post of Khalasi-cum-Chaukidar vide office order no. 91 contained in Memo No. 1218 dated 4.11.1982 with effect from November, 1982 and the petitioner no.3 was appointed as Chaukidar vide order office order no. 36 contained in Memo No. 516 dated 3.5.1983. The petitioners claim that their basic pay was enhanced but, at the later stage, they were given the benefit of 6th Pay Commission Scale and, later on, the Executive Engineer has published the notice dated 9.11.2001 in which list of persons who have completed five years of service on 1.8.1985 were notified. The Executive Engineer, P.H.E.D., Munger vide letter contained in Memo No. 26 dated 5.1.2002 has asked all the persons to submit the first joining report from the Additional Divisional



Officer, Public Health Division, Jamalpur and in absence of the First Joining Report, the Chief Engineer, P.H.E.D. vide Memo No. 2537 dated 26.4.2002 wrote a letter to all Regional Chief Engineer, Superintending Engineer and Executive Engineer, Bihar, Patna directing to dismiss the services of those persons who were appointed either as a Work Charge Establishment or as a Daily Wager and, accordingly, vide Memo No. 464 dated 27.5.2002, the Executive Engineer terminated the services of the petitioners in the light of Memo No. 2537 dated 26.4.2002 but, later on, the Executive Engineer vide Memo No. 472 dated 28.5.2002 amended the letter vide Memo No. 464 dated 27.5.2002 and converted the services of the petitioners as daily wager, whereafter, the petitioner no.1 made an application dated 10.6.2002 to the Executive Engineer, P.H.E.D. stating therein that his services cannot come under the purview of Memo No. 464 dated 27.5.2002 and memo no. 472 dated 28.5.2002 (Annexure-13 and Annexure-14). The Commissioner cum Secretary, P.H.E.D., Government of Bihar vide letter dated 4022 dated 28.6.2002 wrote a letter to the petitioners that their services has been converted as daily wagers with effect from 1.4.2001 and they will be paid their salary as daily-wager from 1.4.2001 to 30.5.2002 in the scale of daily wage rated employee and the Executive Engineer, P.H.E.D.,



vide memo no. 753 dated 29.8.2002 has issued a direction to pay salary to those work-charge employee who accepted the demotion as a daily wager.

It has been alleged that the letter has been issued without show-cause, without giving an opportunity of hearing and without holding enquiry. Being aggrieved by the action, the petitioners have approached this Court in C.W.J.C. No. 691 of 2003 for quashing the memo no. 464 dated 27.5.2002 (Annexure-13) and memo no. 472 dated 28.5.2002 (Annexure-14). During pendency of the said writ application, the Government has issued memo no. 1029 dated 20.11.2007 whereby the services of the petitioners has been regularized with effect from 28.11.2006 and the annual increment would start from 1.11.2007. In such a situation, this Court disposed of the case vide order dated 5.8.2009. In the present case, a claim has been made for regularization of service from the earlier date. It appears that all through they were either in the daily wager or the Work Charge Employee and they have been regularized at a later stage and the prayer for giving retrospectivity does not arise because it depends upon the manner of entry in service, it is a case of regularization in service, it is the employer would decide the date of regularization.



This Court does not find any merit in the present writ application and the same is dismissed.

However, the petitioners are at liberty to file a representation to the authority concerned who will consider the claim of the petitioners will take a decision in accordance with law.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2018
Transmission Date	NA

