

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3495 of 2002

1.NARESH CHAUDHARY SON OF GAURI KANT CHAUDHARY,
RESIDENT OF VILLAGE+P.O.- PARWARA, VIA-ILMAS NAGAR,
DISTRICT SAMASTIPUR.

2.RAJ KUMAR RAI SON OF RAM PADARATH RAI, RESIDENT OF
VILLAGE+P.O. DHARHA, P.S. ROSERA, DISTRICT SAMASTIPUR.

3.MANI KANT SINGH SON OF SRI BHARAT SINGH, RESIDENT OF
VILLAGE AND P.O. ARAUT MUSHAHARI, DISTRICT SAMASTIPUR.

4.NAND KISHORE RAI, SON OF SARYUG RAI, RESIDENT OF
VILLAGE MAHRAUR, P.O. SONUPUR, DISTRICT SAMASTIPUR.

5.JAGDISH MAHATO SON OF SRI RAM KISHUN MAHATO,
RESIDENT OF VILLAGE + P.O. ROSERA, DISTRICT SAMASTIPUR.

... .. Petitioner/s

Versus

1.THE STATE OF BIHAR, THROUGH THE SECRETARY, MINOR
IRRIGATION DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

2.THE COMMISSIONER-CUM-SECRETARY, MINOR IRRIGATION
DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

3.THE CHIEF ENGINEER, MINOR IRRIGATION DEPARTMENT,
GOVERNMENT OF BIHAR, MUZAFFARPUR AREA NEAR HATHI
CHAUK, MUZAFFARPUR.

4.THE SUPERINTENDING ENGINEER, MINOR IRRIGATION
DEPARTMENT, DARBHANGA CIRCLE, DARBHANGA.

5.THE EXECUTIVE ENGINEER, THE MINOR IRRIGATION DIVISION,
SAMASTIPUR DIVISION, SAMASTIPUR AT JITWARPUR.

6.THE ASSISTANT ENGINEER, MINOR IRRIGATION DEPARTMENT,
ROSERA SUB-DIVISION, ROSERA, DISTRICT-SAMASTIPUR.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. HARENDRA PRASAD SINGH, ADV & MR.
SANTOSH KUMAR, ADV



For the Respondent/s : Mr. NIRBHAY PRASHANT AC TO SC-17.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 13-03-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution of India has been filed by the petitioners for setting aside the order dated 24.12.2001 passed by respondent no. 5, the Executive Engineer, Minor Irrigation Division, Samastipur, by which the services of the petitioners as daily wager employee have been terminated w.e.f 25.01.2002 and secondly for payment of arrears of salary for the period they have worked as daily wagers on the said post till their removal by impugned order dated 25.01.2002.

Petitioners were appointed on various dates from 1981 to 1983 as daily wager on the post of Pump Operator and Chaukidar and were paid their daily wages up to April-2001. The petitioners were working as daily wager in the Samastipur Division under the control of Executive Engineer, respondent no. 5.

It has been submitted that the petitioners were appointed by the competent authority after due advertisement and due publication in the local newspaper as well as notice board. The post on which petitioners were appointed is a duly sanctioned post under the work charge establishment by the State Government and



petitioners had requisite qualification for the said post. A list was also kept and maintained in the office of Executive Engineer, respondent no. 5 as per their entry in the service. The petitioners had earlier approached this Court in CWJC No. 9522 of 1995 as contained in Annexure-6 for regularization of their services in the regular establishment as per policy decision of the Government of Bihar vide notification dated 18.06.1993 in which they have resolved to regularize services of all daily wagers in the work charge establishment under the regular establishment if they have been continuously working for five years or more under work charge establishment. The petitioners were eligible and qualified for regularization of their services and the writ petition was disposed of on 09.12.1998 by this Court and before this Court undertaking was given by the State of Bihar that admittedly petitioners were engaged prior to 01.08.1985 and as such they are entitled to be regularized in service under the scheme of Government as resolved in resolution no. 5940 dated 18.06.1993 issued by the Personnel and Administrative Reforms Department, Government of Bihar. Relevant part of the order passed by this Court in CWJC No. 4622 of 1997 dated 09.12.1998 is quoted hereinbelow:-

"A few minutes after the above order was passed, counsel for the petitioners appeared



and explained that he was held up in some other court. The above order was accordingly not signed by me and the case was taken up for hearing.

There are seven petitioners before this Court all of whom are working as Chowkidars on daily wage basis in the Lift Irrigation Scheme of the Minor Irrigation Department. They claim the following reliefs in this writ petition:

(a) Regularisation in service.

(b) Payment of the arrears of their wages from January, 1995 till the date of the filing of the writ petition; and

(c) Payment of wages equal to the employees working on the post of Chowkidar on a regular.

According to the petitioners they were engaged to work as Chowkidars on different dates between the years 1976 to 1983. The date of engagement of petitioners 2 to 7 does not seem to be in dispute. Some controversy, however, seems to be there regarding the date of engagement of petitioner no. 1. According to him he was engaged on 02.11.1975. The respondents do not accept this date and according to them he was engaged later.

However, what is more significant in this case is that all the petitioners were admittedly engaged before 01.08.1985 and all of them are, therefore, entitled to be regularised in service under the scheme of the Govt. as envisaged in resolution no. 5940, dt. 18.6.93 of the Personnel &



Administrative Reforms Department. This position is admitted on behalf of the State.

Learned counsel for the State submitted that the petitioners would be duly regularised in service as their turn comes on the basis of their length of service. In this regard, it was stated that had petitioner no. 1 been engaged on 02.11.1975, he should have been by now regularised in service and he is still waiting to be regularised in because his engagement was made not in 1975 but in the year 1979. As the respondent authorities are admitting the claim for regularization made on behalf of the petitioner on the basis of of the Govt. resolution dt. 18.6.1996, no order need be passed by this Court in that regard. It may, however, be observed that as stated on behalf of the State, the petitioner be regularized in service as and when their turn comes in terms of the scheme.

So far the payment of arrears of salary is concerned, counsel for the petitioners stated that during the pendency of this case in this court some payments were made to the petitioners. Counsel for the State submitted that payments of wages may be in arrear for want of sufficient funds in the department and the payment of all due wages to the petitioners will be made as and when funds are allocated. No positive order on this score also, therefore, need be passed by this Court. It is however observed that as soon as allocation are



made by the Government all dues wages would be paid to the petitioners without any delay.

Coming now to the last relief claimed by the petitioners, I am satisfied that they too are entitled to the same direction as this Court is making in similar cases, that is, the petitioners will be paid their monthly salary in the minimum of the time scale of pay admissible to the post on which they were working.

They will not be entitled to any annual increments etc. but they would receive their salary with effect from the month of December, 1998, till their regularisation in terms of the Government scheme not on daily basis but in the minimum scale of the time scale of pay for the post on which they are working.

This writ petition thus stands disposed of with the aforesaid observations and directions."

The order as passed in Annexure-6 in favour of petitioners on the basis of similar orders passed by this Court as contained in Annexure-3 and 4 by which this Court had directed to regularize the services of the petitioners and similarly situated persons on the basis of policy decision adopted by the State Government dated 18.06.1993 and learned counsel appearing on behalf of the State of Bihar had made statement that the case of the petitioners is also covered by the judgment as contained in



Annexures-3 and 4 and since they are in service and covered by the resolution adopted by the State Government their services will be regularized as per their turn comes. However, instead of regularization, their services were terminated by order dated 24.12.2001 as contained in Annexure-8 issued by the Executive Engineer, Minor Irrigation Division, Samastipur on the ground that no work is available for the petitioners on which they can be continued to remain posted and as such their services are no more required and they have been disengaged from the said post. As per rules framed by the Government of Bihar under Article 309 of the Constitution of India with respect to employees working under the work charge establishment, and as per said provision they have continued for more than one year on the basis of which they are appointed, it will be deemed that the said post has been converted into post of regular establishment and as per said provision and they continued to work against the post which has been converted in the regular establishment. After one year of continuous service on the said post they were granted the status of temporary Government employee. In the present case after more than 15 years of continuous service as a daily wager in the work charge establishment they have been removed on the ground that no work is available for them which is contrary to the Rules framed by the



Government with respect to service conditions of work charge establishment. The Government had also adopted policy decision by its resolution dated 18.06.1993 that all the work charge employees who were appointed prior to 1985 will be regularized in the regular establishment and pursuant to the said policy decision the learned counsel for the State of Bihar had also conceded before this Court that the case of petitioners are similar to the case as contained in Annexures-3 and 4 and their services will be regularized as per their turn in due course. However, contrary to their undertaking before this Court their services have been terminated on the ground that no work is available for them. Subsequently, during pendency of the writ petition, the Minor Irrigation Department had issued circular dated 24.06.2006 that the Government has decided to increase the cut-off date which was earlier 01.08.1985 to 11.12.1990 for the employees working under the work charge establishment and even persons who were engaged between 01.08.1985 to 11.12.1990, their services have been regularized and as one time measure all the employees who were working as daily wager in the work charge establishment, their services will be regularized in terms of the letter dated 16.03.2006 and subsequent thereto a resolution was also issued by the department of Finance dated 17.10.2013, in which it has been



stated that earlier the Finance Department by resolution no. 6394 dated 23.10.1987 has taken a decision that the employees who were working continuously for five years till 01.10.1984, their services will be regularized in the regular establishment in which it has been stated that the employees prior to 11.12.1990 have been regularized under the regular establishment vide notification no. 489 dated 10.05.2005 by Personnel and Administrative Reforms Department.

After hearing both the parties and considering the materials available on record, as per policy decision of the Government, the order of disengagement of petitioners is not sustainable in the eye of law particularly when they had undertaken before this Court that the services of the petitioners will be regularized as contained in CWJC No. 4622 of 1997 dated 09.12.1988, of which relevant para has been quoted above, as such the services of the petitioners being dismissed cannot be sustained and is accordingly, set aside as well as Annexure-8 dated 24.12.2001 is set aside. Petitioners are directed to file a detailed representation before the respondent no. 3, who will consider the claim of the petitioners in terms of resolution dated 24.06.2006 of the Minor Irrigation Department as well as resolution no. 10710 dated 17.10.2013, and



pass a reasoned and speaking order considering the representation of the petitioners within three months from the date of presentation/receipt of a copy of the order of this Court.

The respondent no. 3 will also consider the direction of this Court as referred above regarding payment of wages as per direction of this Court in previous litigation within the said period.

With the aforesaid observation and direction, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

