

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.369 of 2016

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1. Ganesh Rai S/o late Baidya Nath Rai Resident of Village-Patori ,P.O
Panchgachia, P.S Bihra, District Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Principal Secretary, PHED (Public Health Development) Bihar, Patna.
3. The Finance Commissioner ,Bihar, Patna.
4. The Engineer In chief ,PHED, Bihar, Patna.
5. The Collector, Madhepura.
6. The Superintendent Engineer, PHED, Saharsa.
7. The Executive Engineer, PHED, Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mallika Mazumdar, Adv.

For the Respondent/s : Mr. Manoj Kumar A.C. to SC1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-04-2018

Heard Ms. Mallika Mazumdar, learned counsel for the
petitioner and Mr. Manoj Kumar learned counsel for the State.

The petitioner prays for counting of his past services for the
purpose of continuity in service and other consequential benefits. The
relevant facts essential for disposal of the grievance raised briefly
stated is that the petitioner was appointed as a Tubewell Khalasi on
17.4.1986 vide order No. 76 dated 17.4.1986. The petitioner gave his
joining on 08.09.1986 and continued to work as Tubewell Khalasi in
pursuance of his appointment order at Annexure 1 which was
apparently an appointment on compassionate ground until his services



were terminated under the orders of the Commissioner-cum-Secretary dated 02.11.2002 with effect from 30.9.2002. The reason for termination as reflected from the order, is that the petitioner could not have been appointed on compassionate grounds in a work charge establishment.

Immediately thereafter that a fresh appointment order was issued under the orders of the Commissioner-cum-Secretary, Public Health and Engineering Department bearing No. 7494 dated 2.11.2002 in reference to the circular dated 5.10.1991 whereby the petitioner was appointed on compassionate grounds on the post of a Peon as manifest from the order so issued under the signature of the Executive Engineer bearing Memo No. 16 dated 13.1.2003 at Annexure 4. The order confirms 2 relevant aspects of the matter namely;

(a) That the appointment was in the nature of the compassionate appointment; and

(b) That it was made effective from 01.10.2002, which date is relevant because vide order dated 02.11.2002 impugned at Annexure 3, the earlier service of the petitioner had been terminated with effect from 30.9.2002.

The petitioner continues in service on the post of Peon by virtue of the appointment letter dated 13.01.2003 at Annexure 4 and has



approached this Court praying for continuity of his service, by calculating his entire service period with effect from his initial appointment vide order dated 17.04.1986 at Annexure-1 until date, notwithstanding the termination order dated 02.11.2002 with effect from 30.09.2002 because it was followed by the appointment order dated 13.01.2003 which appointed the petitioner from the following day i.e with effect from 01.10.2002.

I have heard learned counsel for the parties and I have perused the records.

Ms. Mallika Mazumdar, learned counsel for the petitioner explaining the sequence as discussed above, prays for calculation of the entire service of the petitioner for the fault whatsoever lay with the respondents in providing with such appointment which required a rectification by the order dated 13.1.2003 at Annexure-4. It is the submission that since the earlier appointment of the petitioner on compassionate grounds had been made to an office which was impermissible under the relevant circular that the fault lay with the respondents who cannot object to the prayer made. Counsel for the State endorses the stand taken by the respondents in the counter affidavit.

It is rather peculiar that even though the respondents do admit to the appointment of the petitioner on compassionate grounds vide



order dated 17.4.1986 at Annexure-1 which continued the petitioner in service until it was terminated vide order dated 02.11.2002 at Annexure-3 with effect from 30.9.2002 because it is due to fault of the respondents that instead, the petitioner was appointed to a work charge establishment in place of regular service and that error was corrected as the termination was followed by a fresh appointment order dated 3.11.002 issued in the light of the advisory issued by the Commissioner cum Secretary in his letter dated 7494 dated 2.11.2002, w.e.f 1.10.2002, a copy of which is placed at Annexure R/C, the error was set right and continuity maintained.

A default by the respondents themselves to provide the petitioner with an appointment which required a rectification, can neither enure to their benefit nor prejudice the claim of the petitioner for a continuity from the date of his initial appointment. In fact, even if the petitioner has served under the work charge establishment initially on the post of Tubewell khalasi followed by regular appointment, there is no dispute yet to the entitlement of the petitioner for continuity benefits in view of the Finance Department Circular bearing No. 1393 dated 31.03.2004 which in turn refers to the earlier Finance Department Circular No. 1503 dated 27.3.1987 regularizing the period spent by an employee in the work charge establishment for the purpose of continuity as well as determination of post retiral



benefits. In the circumstances noted, there is absolutely no impediment to the relief of continuity prayed by the petitioner.

In result, the writ petition is allowed. The respondents are directed to count the entire service period of the petitioner since his initial appointment on 17.4.1986 vide Annexure 1 for the purpose of continuity and calculation of his service benefits to which he is found entitled. I would clarify that the termination order dated 2.11.2002 at Annexure 3 would make no dent to the claim of the petitioner because this termination order made effective from 30.9.2002 has been diluted by the fresh appointment order of the petitioner dated 13.1.2003 which is made with effect from 01.10.2002 i.e the very next date of the cessation of the service.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.04.2018
Transmission Date	NA

