

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5637 of 2009

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Shila Devi, Aged about 53 Years W/o late Sita Ram Yadav R/o Village-
Pokharshama, P.O. Milki Chak, P.S. Bahadurpur, District- Darbhanga.

.... Petitioner/s

Versus

1. The Bihar State Tourism Development Department Bir Chand Patel Path, Patna through its Managing Director.
2. The Managing Director, the Bihar State Tourism Development Corporation Bir Chand Patel, Path, Patna.
3. The Senior manager(Administration) Bihar State Tourism Development Corporation Bir Chand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Giridhar Gopal Tiwary
Mr. Dharmendra Kumar
For the Respondent/s : Mr. P.K.Jaipuriyar
Mr. Anshuman Jaipuriyar
Ms. Anukriti Jaipuriyar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 23-01-2018

Heard learned counsel for the petitioner and counsel for
the State.

In the present case, the petitioner is challenging the order
dated 5.11.2006 issued vide office order no. 62/2006, Memo No.
901/06 dated 5.11.2006 issued by the respondent no.3, the Senior
Manager (Administration), whereby and whereunder, he has stopped
the payment of minimum time scale of pay with effect from 14.5.2003
and ordered to pay daily rated wage to the petitioner and recover the
excess amount paid to him. Further prayer has been made to quash the



order dated 29.10.2007 passed and issued vide letter no. 1661/07 by the respondent no.2, the Managing Director, Bihar State Tourism Development Corporation, Bir Chand Patel Path, Patna whereby the respondent no.2 has affirmed the order of Senior Manager (Administration).

The petitioner along with others was working in the Bihar State Tourism Corporation on daily wages. The present case is not for the purpose of regularization in service but is being confined to the recovery of the excess amount from the petitioner.

One Tej Narayan Singh has filed writ application before the Ranch Bench of Patna High Court bearing C.W.J.C. No. 1277 of 1998 (R) wherein the Ranchi Bench disposed of the writ application with a direction to regularize the services of Tej Narayan Singh expeditiously as possible and preferably within a period of one month from the date of receipt of copy of this order and take a decision for payment of regular pay scale as respondent no.2 may think fit and proper. Against this order of the Single Judge, the Bihar State Tourism Development Corporation has moved before Ranchi Bench in L.P.A. No. 15 of 2000 along with L.P.A. No. 308 of 2001 in which the Division Bench of this Court has directed to take immediate steps to evolve a scheme for regularization of the services of Tej Narayan Singh on the posts for which they were eligible along with others who



were entitled to apply for, as and when such recruitment arise, and consider their claim on merit and in accordance with Rules along with all eligible candidates, as early as possible. One Jitendra Kumar and others have also filed C.W.J.C. No. 5822 of 1997 which was disposed of in favour of the petitioners and against that order, L.P.A. No. 6 of 1999 was filed by the Bihar State Tourism Development Corporation which was dismissed by the Division Bench, relevant portion whereof reads as follows:-

“8 *It would be shameful on the part of any authority within the meaning of Article 12 of the Constitution of India to make a person worked for 19 long years without giving him remuneration to which he was otherwise entitled to and, accordingly, to deny him the right to live with human dignity.*

9. *In those circumstances, we find that there is no scope of interference with the judgment and order under appeal and, accordingly, while we dismiss the appeal, recall the interim order passed by this Court on 21st December, 1999 and accordingly, we make it clear that with effect from the date of judgment and order under appeal, i.e. with effect from 18th November, 1998, after having had served for 10 years, the writ petitioner-respondent became entitled to regular scale of pay attached to Class-III employees of the appellant corporation.”*

Thereafter, the Corporation recognized the services of



the employees and gave scale of pay to the employees.

It appears that after the judgment of the learned Single Judge, the Corporation started making payment of same scale as is given to regular employees including Tej Narayan Singh. Taking the benefit of that judgment, one Sita Ram Yadav (petitioner) approached this Court in C.W.J.C. No. 7421 of 2000 which was disposed of with a direction to make payment at par with Tej Narayan Singh, he started getting salary at par with Tej Narayan Singh.

The petitioner started getting the same benefit as was given to Tej Narayan Singh, whereafter, the impugned order dated 5.11.2006 has been passed, directed to make payment of salary as per the minimum wages fixed by the Government of Bihar, in result, directed to recover the excess payment made to the petitioner. This order has been passed under the wrong impression that the Division Bench of Jharkhand High Court prohibited the regularization of daily wages employees. The order dated 5.11.2006 (Annexure-14) has been affirmed by the order dated 29.10.2007 (Annexure-15) passed by the Chairman-cum-Managing Director, Bihar State Tourism Development Corporation.

The question in the present case is that the payment has been made in pursuance of the direction given by this Court and at no point of time the order of this Court has any time been modified or it was



superseded or the same was set aside or reviewed but, only because there is an interference in the order of the Single Bench as it has issued a direction for their regularization but, in place of that, the Division Bench only directed to frame the scheme for regularization and, nowhere, the Division Bench has said that the payment which has been made to the petitioner or other similarly situated persons will be recovered. It was not the act of the employee but it is an act of the employer that too at the instance of the Court and without taking permission or without taking any approval or getting it modified, the Corporation has wrongly passed the order for recovery from the original petitioner.

In view of the above, the impugned order dated 5.11.2016 (Annexure-14) passed by the Senior Manager (Administration), Bihar State Road Tourism Development Corporation Limited and the order dated 29.10.2007 (Annexure-15) passed by the Chairman-cum-Managing Director are set aside.

Any recovery which has been made from the petitioner, this Court directs to return the same along with 7% simple interest.

Learned counsel for the Corporation submitted that the order of appeal has been challenged before the Hon'ble Apex Court.

In view of the above, the present order will be subject to the result of the Hon'ble Apex Court order.



With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2018
Transmission Date	NA

