

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17739 of 2014

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Baleshwar Sharma s/o Late Jagdish Sharma resident of at p.o. Bandhuganj ,
p.s. Ghoshi, district - Jehanabad, Bihar, at present residing at Polytechnic
Quarter no. - 7 behind Alamganj thana , p.s. Alamganj, Government
Polytechnic, Gulzarbagh, Patna - 7.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Science & Technology Department, Technology Bhawan, Government of Bihar, Bailey Road, Patna.
2. The Principal Secretary Science & Technology Department, Technology Bhawan, Government of Bihar, Bailey Road, Patna.
3. The Director, Science & Technology Department, Government of Bihar, Bailey Road, Patna.
4. The Finance Commissioner, Government of Bihar, Patna.
5. The Additional Secretary, Science & Technology, Government of Bihar, Patna.
6. The Principal/Principal in charge, Lok Nayak Jaiprakash Narain Institute of Technology, Chapra.
7. The Principal, Government Polytechnic, Gulzarbagh, Patna - 7.
8. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind
For the Respondent/s : Mr. Sc23- Kumar Priyaranjan

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-04-2018

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner to treat the services of petitioner confirmed and regularized since 09.12.1986 and to pay annual increments with effect from the said date in the light of order dated 08.09.2006 and 29.01.2014 passed in C.W.J.C. No. 10680 of 2000 and Civil Review No. 61 of 2008. It has been further prayed for a direction to respondent Nos. 3 and 8 to recalculate the salary and other benefits of



petitioner after giving annual increments since 09.12.1986 and to pay entire consequential arrears of salary and other monetary benefits pursuant to memo No. 715 Patna dated 10.03.2014 issued by respondent No. 3 to the respondent No. 8 in case of petitioners of C.W.J.C. No. 10680 of 2000.

2. The case of petitioner is that there were three Private Engineering Colleges in Bihar at Gaya, Motihari and Darbhanga. Petitioner was appointed in Gaya Engineering College on the post of Laboratory Assistant and he joined on the said post on 06.04.1984

3. Bihar Private Engineering College (Taking over) Third Ordinance, 1990 came into existence by which said Engineering Colleges were taken over by the State of Bihar with effect from 09.12.1986.

4. After taking over, all the employees of said Engineering Colleges were treated as Ad hoc employee under clause 5(1) of the said Ordinance and petitioner was also treated as ad hoc employee working on the post of Laboratory Assistant in the Gaya Engineering College since 09.12.1986.

5. In pursuance of said Ordinance a Screening Committee was constituted which recommended for regularization of service of petitioner and other employees



(teaching and non-teaching) with effect from 31.01.1991 and also recommended for termination of other ad hoc employees who were working since 09.12.1986 on the ground of over age, surplus, unqualified or appointed subsequent to date of taking over. They were terminated on 31.01.1991.

6. Petitioner was confirmed and regularized with effect from 31.01.1991 and got annual increments and all other monetary benefits of permanent employee.

7. Employees whose services were terminated with effect from 31.01.1991 moved this Court and got their services reinstated. In C.W.J.C. No. 10680 of 2000 Sanat Kumar Pandey & others Vs. State of Bihar & Others, this Court held that petitioners were entitled to benefits of annual increments from the date of taking over of the colleges i.e. 09.12.1986 as well as continuity of service.

8. Against the order dated 08.09.2006 passed in C.W.J.C. No. 10680 of 2000 State of Bihar filed Civil Review No. 61 of 2008 State of Bihar & Others Vs. Sanat Kumar Pandey & Others which was dismissed on 29.01.2014 confirming the order dated 08.09.2006 passed in writ petition.

9. In pursuance of order dated 08.09.2006 and 29.01.2014 respondent no. 3 issued memo No. 715 Patna dated



10.03.2014 to the respondent No. 8 for issuance of salary slip in favour of petitioners of said writ petition after calculating the annual increments with effect from 09.12.1986.

10. It has been submitted on behalf of the petitioner that when the teachers of said Engineering Colleges who were serving in those colleges from before of its take over by the State Government and who worked on ad hoc basis since the date of take over i.e. 09.12.1986 and whose services were terminated with effect from 31.01.1991 got their services confirmed and regularized with effect from 09.12.1986 with all increments from said date, as such, petitioner is also entitled to be regularized with effect from 09.12.1986 and his annual increments must be calculated from said date.

11. A counter affidavit has been filed on behalf of respondents in which it has been stated that the service conditions of teachers and other employee had been decided in Section 5 of the said Act. In Section 5(3) of the Act, the Government had power to determine the service condition of the employee of taken over colleges.

12. It has been further submitted that as per provision contained in Section 5(1) and Section 5(2), services of petitioner was on ad hoc basis for the purpose of screening. On receipt of



the report of Screening Committee constituted under Section 5(2) of the Act, the respondent Government absorbed the service of petitioner with effect from 31.01.1991 under provisions of Section 5(3) of the Act.

13. It has been further submitted that similarly situated persons like petitioner filed C.W.J.C. No. 5024 of 1999 (Navo Nath Jha & Others Vs. State of Bihar and others) with a prayer to absorb their services with effect from 09.12.1986 as the college was taken over on said date and they also worked on ad hoc basis from 09.12.1986 . However, said writ petition was dismissed on 05.09.2000 and L.P.A. No. 1575 of 2000 filed against said order was also dismissed on 13.12.2000 and same being challenged in S.L.P. No. 3043 of 2000 it was dismissed on 19.11.2001.

14. It has been further submitted that pursuant to the order passed in Civil Review No. 61 of 2008 on 29.01.2014 the order No. 715 dated 10.03.2014 is conditional and limited to the petitioners of C.W.J.C. No. 10680 of 2000.

15. It has been submitted on behalf of the petitioner that judgment and order passed in C.W.J.C. No. 10680 of 2000 and its confirmation in Civil Review No. 61 of 2008 dismissed on 29.01.2014 and in compliance of same memo No. 715 Patna



dated 10.03.2014 has been issued and petitioner being similarly placed is also entitled for benefit arising out of said order. The state cannot discriminate between two similarly placed employees on the ground that some had approached the High Court and the favourable order has been passed by High Court and similarly placed employees who did not approach the High Court, the benefit of said order cannot be extended to them and same is contrary to the litigation policy adopted by the State.

16. The order on basis of which petitioner is claiming benefit is judgment in rem and not in personam, and as such, petitioner is also entitled for benefit issued to petitioners of said case by the respondents by issuing memo No. 715 Patna dated 10.03.2014. The respondents are directed to grant similar benefits to the petitioner which has been granted to the petitioners of C.W.J.C. No. 10680 of 2000. However, petitioner will be granted notional benefit from 09.12.1986 as he was a fence-sitter and was just watching the outcome of writ petition and when favourable order was passed he has approached the High Court for similar benefit, and as such, actual monetary benefit is limited to three years prior to filing of writ petition.

17. The relief granted is subject to any decision passed in L.P.A. filed by respondents against the order dated 08.09.2006



passed in C.W.J.C. No. 10680 of 2000.

18. The writ petition is allowed to the extent indicated above.

(S. Kumar, J)

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Uploading Date	
Transmission Date	

