

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6834 of 2017

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Chanarik Baitha Son of Sukhlal Baitha, Resident of Shipara East, P.S.- Beur,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Joint Secretary, Department of Social Welfare, Government of Bihar, Patna.
4. Director, Integrated Child Development Scheme, Indira Bhawan, 2nd Floor, Boring Canal Road, Patna.
5. The Commissioner and Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
6. The Account General, Bihar, Beer Chand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. Sunil Kumar Mandal-SC3
Mr. Bipin Kumar, AC to SC3
Smt. Neelam Kumari, AC to SC3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-08-2018

Heard the parties.

2. In the present writ petition, the petitioner has made a claim to extend the benefit of pension by issuing an order of permanent absorption with effect from the date of his deputation as has been granted to all other similarly situated employees who have been absorbed and regularized in the service of State of Bihar.

3. The short facts of this case are that petitioner was working as Clerk-cum-Typist on regular basis in the office of Child Development Project Office, Chehra Kala, Vaishali in the Directorate of Integrated



Child Development Services of the Social Welfare Department.

4. The petitioner was initially appointed in the Bihar State Construction Corporation and was functioning as Accounts Assistant, alongwith many other persons working in different public Sector Enterprises, operating in State of Bihar, but the said Corporation has failed to achieve the desire, goal, objects and purpose for which it was established, turned to be white elephant forced the Government to take stock of overall economic health situation, found, not financially viable, took a conscious decision to wind up all such corporation including Bihar State Construction Corporation. After the decision of winding up of unviable corporations and also looking towards the pitiable financial position of the employees of those Corporations/Boards/Public-Sector Enterprises, the Government has considered and decided to rehabilitate persons working in those such Corporation, decided the modus of rehabilitation by way of accommodating the employees working in those organization by sending them on deputation in different Department of State of Bihar.

5. The petitioner was also declared surplus on account of closure of his corporation. The Treasury and Accounts Directorate of Finance Department, for rehabilitation called the name of such employees working in such Corporation, Board, Public Sector Undertakings which were declared non viable for utilization of their staffs in



different Treasuries and Departments of the State of Bihar.

6. The Treasury and Accounts of Finance Department received the list of surplus staffs who were considered for absorption. The Directorate of Treasury Accounts – cum – Additional Secretary, Finance Department came out with a letter no. 447 dated 24.08.1996, published a list of selected candidates for rehabilitation on deputation basis. The deputation was made on year to year basis, if their services were found to be satisfactory they would be finally absorbed in the department. Those who were sent on deputation in different Treasury after completion of their services satisfactorily they were permanently absorbed and they continued to discharge duty as regular employee of State of Bihar, inasmuch as they were treated in pensionable service, accordingly, they have been extended the benefit of pension.

7. The name of the petitioner was also forwarded but ultimately he was not absorbed. The integrated Child Development Scheme, were functioning in different parts of the State, as there was paucity of the staff, the Commissioner and Secretary of the Welfare Department came out with a letter no. 80 dated 07.02.1996, by which the Secretaries of various departments of State of Bihar were requested to forward the list of surplus employees of such Corporations. The name of the petitioner alongwith others was also forwarded, after crossing through the selection process, the services of the petitioner vide



Memo No. 251 dated 21.03.1997 (Annexure – 2) was taken on deputation basis in I.C.D.S. Projects which functions under the Welfare Department, he continued to discharge the duty on Class III post of clerk without there being any adverse remark by his superior officers.

8. The matter came for consideration for regularization of services of those who were on deputation. The respective departments were taking steps for repatriation of those who were working on deputation in the different departments resulting into was termination of service as they would not get any return by way of their remuneration, on account of bad financial condition and as it was nothing but final death knell of their service career.

9. Large number of writ petitions were filed against the order of repatriation, ultimately the case came before the Division Bench of this Court in L.P.A. No. 608 of 2006 (Avinash Vatsyayan Vs. State of Bihar & Ors.) and its analogues appeals. The Court considered the issue of repatriation from different angles including resultant effect would be doomed service career. The Court has taken view if they would be repatriated, employees would meet with the doomed future on account of fact that they would not get any things from beleaguered Corporation. The Court finally held that the order of repatriation is nothing but an order of dismissal, the Court declared



the repatriation/dismissal is illegal and set aside the same, pass the order of reinstatement with all consequential benefit. It will be relevant to quote para nos. 24 and 25 of the judgment of Avinash Vatsyayan Vs. State of Bihar & Ors. (Annexure – 7).

“24. In the light of what has been discussed and held above, it follows as a logical corollary that all the appeals must succeed except L.P.A. No. 1110 of 2004. Accordingly, the judgment and orders under challenge in other appeals are set aside. Further, the impugned orders or actions under challenge whereby the appellants have either been ordered to be repatriated on or are threatened with repatriation are quashed. The respondent-authorities are directed to treat the deputation of appellants not as simple deputation but one under a valid policy for the purpose of rehabilitation or absorption through the device of transfer of service and to take follow up action, if required, within three months. The respondents will also keeping in mind and act as per the earlier judgments which were accepted by them and similarly situated employees were absorbed because the State and its officials, i.e., the respondents are duty bound to ensure equality of treatment to the appellants. Till such decision or follow up actions are taken by the appellants shall be allowed to continue on the posts which they held on deputation and for all practical purposes they shall be treated to be the employees of the concerned departments where they are / were



working on deputation. The writ petitions are allowed to the aforesaid extent. It is made clear that if, on account of the judgment and orders under appeals any of the appellants whose appeals have been allowed have been repatriated from their posts under the State or dismissed from service, such impugned or consequential orders of repatriation or dismissal shall stand quashed and they shall be reinstated and allowed to work with all consequential benefits. In the facts of the case there shall be no order as to costs.

25. L.P.A. No. 1110 of 2004 has to be dismissed for two reasons. Firstly, because nobody has appeared to press this appeal and secondly because the appellants of this appeal were admittedly sent on deputation in the year 2001 which was after the cut off date of 16.11.1999 and hence their initial deputation itself was illegal and contrary to the revised policy of the State Government as per law declared by a Division Bench of this Court in the case of State of Bihar Vrs. Gopal Prasad, 2003 (4) PLJR 495. Hence, while other appeals stand allowed as indicated above, this appeal is dismissed but without costs. ”

10. Similar problem arose in the different departments, the employees along with other 11 individual persons moved before this Court in CWJC No. 10016 of 2007, thereby claiming that their repatriation is nothing but forced dismissal, as defunct organization would hardly offer them any financial assistance it will be nothing but



acceptance of order of dismissal and Court has placed reliance on the order passed in L.P.A. No. 608 of 2006 and its analogues appeals and granted the same benefit as has been given to those persons of that L.P.A. No. 608 of 2006 and accordingly the petition was allowed. It will be relevant to quote the last part of the order passed in C.W.J.C. No. 10016 of 2007;

“ I find that all petitioners who are members of Petitioner No.1 “Association” as well as other petitioners, stands on similar footing as appellants of the LPA No. 608 of 2006 and its analogous appeals, as such entitled for similar relief. Accordingly, the Respondent Nos. 2, 3, 4 and 5 are directed to pass necessary order of absorption of all these petitioners. None of the petitioners shall be repatriated to those defunct Board, Corporations, Public Sector Undertakings/Enterprises, which were their parent Department. Petitioners will be allowed to superannuate from the posts, they are working. They will be paid their salary, pensionary benefits, remaining on the same post. ”

11. But, instead of granting the benefit, the authorities were bent upon to repatriate the employees who were brought by way of deputation, on that account contempt application vide M.J.C. No. 4793 of 2010 (Annexure 10) was filed before this Court and same was disposed vide order dated 28.09.2011 (in which I myself was a party to the order) Division Bench has set aside the order and declared that



all beneficiaries shall be treated for all practical purpose as Government servant from the date of deputation for the purposes of pensionary benefit also . It will be relevant to quote the last part of the order passed in M.J.C. No. 4793 of 2010:

“It is clarified that in terms of Division Bench judgment, the petitioners and all the beneficiaries shall be treated for all practical purposes as government servant from the date of deputation for the purpose of pensionary benefits. This view is supported by Division Bench judgment of this Court in the case of Kamlesh Narayan Singh passed on 12th February 2004 in L.P.A. No.154 of 2004 which has been affirmed by the Apex Court.

The contempt applications are disposed of but with liberty that if this order is not complied by the opposite parties within a reasonable time, as indicated above, the petitioners will be at liberty to move this Court again ”.

12. So the Court was in view that those persons who have been sent on deputation are required to be absorbed and services will be treated to be continued from the date of deputation.

13. In view of that order passed in L.P.A. Nos. 795 of 2006, 628 of 2006 and 680 of 2006, 7 persons, namely, Kameshwar Prasad and others have been regularized in service vide Memo No. 3956 dated 03.08.2015 and they were granted the proper scale corresponding to



their posts.

14. Instead of granting the benefit of absorption to those who were working on deputation, the authorities took decision for repatriation to the parent department, against that decision of the Government the petitioner, approached this Court in C.W.J.C. No. 531 of 2011 which was allowed, whereby, the Court quashed the order of repatriation and directed for consideration of regularization in services. When the order passed by Hon'ble Single Bench was not implemented, the petitioner was forced to approach this Court vide M.J.C. No. 3694 of 2011, which was adjourned with liberty to file to its show cause and Court had shown its hope that the order be carried out, but in the meantime, instead of passing the order of absorption the State of Bihar filed L.P.A. No. 634 of 2012, which was dismissed vide order dated 22.09.2014, ultimately vide order dated 16.02.2015, the petitioner was allowed to work up to 60 years and the payment of salary was made. But the order of absorption was not passed granting the pensionary benefit.

15. In the meantime, M.J.C. no. 3694 of 2011 came for final disposal, the Court has said that as the order has been substantially complied with, the petitioner will be at liberty to raise issue of grant of gratuity by filing a fresh claim before appropriate authority, whereafter the petitioner filed the application making a request for



grant of pension and gratuity but in the meantime the State refused to regularize him in the service and rejected the claim of the petitioner vide Memo No. 4288 of 25.11.2015 (Annexure –C to the counter affidavit), having mentioned that as the entire payment has been made to the petitioner and he was allowed to discharge the duty up to 60 years as the petitioner was not made permanent in service as well as the petitioner is no longer in service, refused to grant the benefit of absorption and thereby the petitioner has been deprived of the benefit of pension and gratuity.

16. Learned counsel for the petitioner submits that in terms of policy decision of the State Government which was endorsed by the Finance Department dated 25.09.2002 whereby it has been decided that those who have been sent on deputation on or before 16.11.1999 they were to be regularized in service and those who have joined service on deputation after 16.11.1999 (Annexure -5), their services would be instantly cancelled. So claim has been made by the petitioner that as per policy decision of the State Government which is reflected from the letter of Finance Department dated 25.09.2002 for regularizing the service of such class of person who were sent on deputation on or before 16.11.1999, their services would be regularized and at the same time this has been affirmed and directed by the Division Bench to grant absorption to those who have been



sent on deputation before the date as aforesaid. So the refusal to grant the benefit of regularization to the petitioner is nothing but invidious act of discrimination and it requires interference by this Court, whereas learned counsel for the State has submitted that the State has already implemented the order of this Court by keeping them in the service under the policy decision dated 29.09.2013 (Annexure –A to the counter affidavit) which prescribes, those who are in service only to be regularized in the respective department, as on the date of passing the order dated 25.11.2015, the petitioner reached the age of superannuation, hence the petitioner has been refused to be regularized and as such he is not entitled to the pensionary benefit and gratuity.

17. Having considered the rival contentions of the parties, the petitioner has already reached the age of superannuation on 31.01.2013 and admittedly the petitioner as well as the association had approached this Court and this Court granted the benefit by passing an order in favour of the members of association. Even after passing the order for regularization when they took steps for their repatriation the employees were coerced to file contempt application, thereafter the authorities have passed an order of regularization. Inasmuch as, in the case of petitioner, same step was done, which was nullified by this Court in C.W. J.C. No.531 of 2011, writ petition



was allowed in favour of petitioner vide order dated 14.7.2011. So on that date the petitioner was in service but the authorities were waiting for superannuation of the petitioner to avoid to grant benefit of regularisation, which was challenged in L.P.A., by the time L.P.A. Bench would have passed the order, the petitioner has superannuated from service. The question in the present case would arise whether the benefit of regularization would be granted to the petitioner in view of the fact that Division Bench in L.P.A. No. 608 of 2006, in the case of Avinash Vatsyayan Vs. State of Bihar & Ors., has specifically held that the persons on deputation will be regularized in service from the date of their deputation. Admittedly the petitioner was sent on deputation in the year 1997, the Division Bench judgment is practically a judgment in rem with respect to those who were sent on deputation before 16.11.1999 and as such, petitioner was/is to be given benefit from the date of deputation.

18. In such circumstances, refusing the petitioner to grant of benefit of pension on account of the fact that he has already superannuated is completely a wrong and arbitrary exercise of the power as on account of callousness of respondents, the matter relates to his absorption in service remain pending even though the Hon'ble Single Bench has already passed an order in favour of the petitioner. The petitioner also approached this Court in contempt with a view to deprive him the



benefit of regularization and to deprive him of pensionary benefit, kept matter hanging in balance, ultimately refused to grant the benefit.

19. In my view, the authority has not exercised its power and authority properly, and as such the petitioner would be treated to have been absorbed service from the date of deputation, in terms of policy decision of the State Government as well as order passed in L.P.A. and as such the impugned order passed against the petitioner is set aside and this Court directs the authority that petitioner should be treated to have been absorbed on and from the date of deputation and he should be granted the pensionary benefit in terms of pension Rule which was operational at that relevant time.

20. With the aforesaid observations and directions this writ petition is disposed of.

Vinay/Sunny

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	6.9.2018
Transmission Date	NA

