

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12016 of 2002

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Rama Nand Prasad Singh, son of Yogendra Prasad Singh, resident of
Bibhutipur, P.S. Bibhutipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The Bihar State Housing Board through its Managing Director, Patna.
2. The Managing Director, Bihar State Housing Board, Patna.
3. The Secretary, Bihar State Housing Board, Patna.
4. The Executive Engineer, Bihar State Housing Board, Patna Division-2,
Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar Tewari, Advocate
	:	Mr. Yogendra Kumar Singh, Advocate
For the Housing Board	:	Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-06-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the memo dated 19.09.2002 passed by Managing Director, Bihar State Housing Board (Respondent No. 2) by which petitioner has been dismissed from service.

3. Briefly stated, the facts of the case is that petitioner was appointed in Jamshedpur Division on daily wages in June 1976. On account of long leave of one Chandrashekhar Narain Mishra caretaker (work charge) and requirement of work the Executive Engineer, Jamshedpur Division posted petitioner on the vacant post of caretaker (work charge) and petitioner joined



said sanctioned and vacant post of caretaker on 03.09.1977.

4. Petitioner was appointed on ad hoc basis by the Executive Engineer, Bihar State Housing Board on the post of caretaker in the office of Assistant Engineer, Bihar State Housing Board, Jamshedpur. The services of petitioner was approved in the board meeting Nos. 78 and 79 dated 25.01.1983 and 02.04.1983 and board has issued letter dated 28.04.1983.

5. Petitioner has been granted time to time different types of facilities/benefits which shows that respondents have treated petitioner as regular employee of the board. Petitioner was transferred from Jamshedpur Division No. 2 to Patna Division No. 2 by the order of Managing Director (respondent No. 2) vide order dated 27.06.1995. Petitioner worked on the sanctioned vacant post and was paid regular salary by the Board.

6. Petitioner had filed a representation for regularization of his service to the Executive Engineer (respondent No. 4) which was duly recommended by respondent No. 4 on 09.10.2001 to respondent No. 3 but instead of regularizing his services show cause was issued for dismissal of his service after 24 years of his service.

7. A show cause was issued dated 18.06.2002 by



Secretary, Bihar State Housing Board (respondent No. 3) as to why his appointment not be cancelled on the ground that Executive Engineer, Bihar State Housing Board, Jamshedpur was not the competent authority for said appointment. Petitioner submitted his reply dated 28.06.2002, however, petitioner was dismissed from service vide memo dated 19.09.2002 on the ground that Executive Engineer, Bihar State Housing Board, Jamshedpur had no power to appoint petitioner.

8. It has been submitted on behalf of petitioner that the Urban Development Department (Housing) on 25.02.1976 adopted Public Works Department Code on its employees and same decision was subsequently adopted on 23.03.1983. According to Rule 60 of Bihar Public Works Department Code, the Executive Engineer is the appointing authority of employee of the Work Charge Establishment.

9. Various circulars have been issued by the State Government by which employees working under Work Charge Establishment have been regularized in service and by decision dated 22.10.1984 the policy decision was taken to regularize the services of all daily wager employees working in the Work Charge Establishment continuously for five years and petitioner was also entitled for regularizing of his service. The State



Government further took decision issued by department of Personnel and Administrative Reforms Department dated 18.06.1993 in which it was resolved to regularize the services of temporary and daily wagger employee working under Work Charge Establishment in the permanent establishment.

10. It has been further submitted that several junior persons have been regularized by the Respondent Board but instead of regularizing the services of the petitioner he has been dismissed from service contrary to decision taken by the State Government although he fulfilled all the criteria for regularization in terms of policy decision of the State Government dated 22.10.1984 and 18.06.1993.

11. A counter affidavit has been filed on behalf of respondents in which it has been stated that petitioner was appointed on unsanctioned post of caretaker by the then Executive Engineer, Jamshedpur Division and appointment was against the directions of Government and the provisions of Bihar State Housing Board Ordinance, 1975. Petitioner was appointed without any advertisement and was a backdoor appointment. He was appointed by the Executive Engineer, who was not the competent authority.



12. Petitioner was appointed as daily wager and was continued on Ad hoc basis. It is true that such appointees do not have any right for regularization or to continue in service and they are not holder of civil post and their services can be terminated without prior notice. It is also true that petitioner was not appointed on regular basis in terms of recruitment rules as contended by respondents in their counter affidavit defending the order of termination. Petitioner was initially appointed as daily wager under Work Charge Establishment and thereafter continued on ad hoc basis and in terms of policy decision of the State Government which was adopted by the Board petitioner was claiming his regularization and similar benefit which were granted to other employees who were working as daily wager or on ad hoc or temporary basis and has been granted by Board but instead of extending similar benefit to petitioner he has been terminated from service on flimsy and nonest ground that petitioner was appointed by Executive Engineer who was not the competent authority. All daily wager in Work Charge Establishment were being appointed by Executive Engineer and they have been subsequently regularized in terms of Government Policy Decision but instead of extending similar benefit to petitioner his services was terminated.



13. After hearing the parties and perusing the materials on the record it appears that petitioner had filed an application for regularization of the service in the year 2001 on the basis of policy decision of the State Government by which the State Government had decided that all ad hoc or daily wager working in the Work Charge Establishment from last five years from the date of issuance of circular dated 22.10.1984 as well as subsequent decision taken by the State Government on 18.06.1993 by which services of daily wager and ad hoc appointee who were working from last five years were directed to be regularized and the same was adopted by the Bihar State Housing Board the respondent. Instead of considering to regularize the services of petitioner they issued a show cause to the petitioner as to why his service should not be terminated because same was done without any advertisement and was a backdoor appointment. Petitioner has brought on record cases of several other employees who are similarly situated and their services have been regularized whereas petitioner has been singled out to be dismissed from service and same is discriminatory and arbitrary. Petitioner was appointed in the year 1976 as a daily wager against a vacant sanctioned post by the Executive Engineer who was the competent authority to



make such appointments under Work Charge Establishment. The appointment was temporary in nature and was liable to be terminated at any point of time without notice. The State Government had taken a policy decision to regularize services of such daily wagers/temporary appointees/ad hoc appointees who were in service under Work Charge Establishment for last five years on the cut off date in 1984 and same decision had been reiterated by the State Government in its policy decision of the year 1993 and recently in the year 2013 also it has been reiterated by the State Government and Housing Board being an instrumentality of the State and adopting such policies was bound to give effect to such policies. Many similarly situated persons have been granted benefit of said policy decision which has been enclosed by petitioner as Annexure-12 and 13 and has not been denied by the respondents in their counter affidavit. As such, the dismissal of petitioner by the impugned order cannot be justified and instead of regularizing the services of petitioner who was working for more than 24 years in the board was dismissed on the ground that his initial appointment was illegal but nothing has been stated by the respondents why the benefits granted to the similar situated persons of the policy of the State Government of 1984 and 1993 was denied to petitioner and he



was subject to hostile discrimination. The order passed by the respondents Board is not sustainable and is accordingly quashed. Petitioner is directed to be reinstated with all consequential benefits and continuity of service, however, with 50% back wages from the date of dismissal till the date of reinstatement within three months from date of production/receipt of a copy of this order by respondent No. 3 Secretary, Bihar State Housing Board, Patna.

The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	20.04.2018
Uploading Date	16.08.2018
Transmission Date	N.A.

