

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9827 of 2016

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Sattan Das, Son of Late Gena Das C/o Suresh Prasad, S/o Rama Nand Pandit,
Resident of village – Bocha Chak in front of Devi Asthan, P.O.- Phulwarisharif,
P.S. Phulwari, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar- through the Principal Secretary Road Construction Department, Government of Bihar, Patna.
2. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Engineer - in - Chief, Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer (Mechanical) Mechanical Wing, Road Construction Department, Government of Bihar, Patna.
6. The Superintending Engineer, Mechanical, Road National Highways, Patna.
7. The Executive Engineer (Mechanical) National Highways Mechanical Planning Division, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
Mr. Yugal Kishor, Sr. Adv.
Mr. Virendra Prasad, Adv.
Mr. Ugranath Mallik, Adv.

For the Respondent/s : Mr. Ashok Kumar Kesari, AAG11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-07-2018

Heard learned counsel for the parties.

The petitioner was appointed as a Vibratory Road Roller Driver in the work charge establishment on 25.09.1989 but was terminated along with one Tuntun Bahadur Thapa on 21.12.2002. He questioned the termination order before this Court in CWJC No. 7056 of 2003 which was dismissed on 14.02.2006 by learned Single Judge.



The petitioner filed an intra Court appeal giving rise to L.P.A No. 194 of 2006 feeling aggrieved by the judgment and order of the learned Single Judge which also was dismissed on 09.01.2007 by the Division Bench . A Civil Review application bearing No. 55 of 2007 was also dismissed for default. A restoration application bearing MJC No. 403 of 2013 was filed by the petitioner for restoration of a Civil Review No. 55 of 2007 and in which a plea was taken regarding a discriminatory treatment to the petitioner as according to him similarly situated employees had been taken back in service however the plea did not satisfy the Division Bench for allowing the restoration application. While dismissing the restoration application a liberty was given to pursue the writ petition earlier filed for the purpose.

According to Mr. Yugal Kishore, learned Senior counsel appearing for the petitioner, it is following a liberty given by the Division Bench that the writ petition can be considered. He also submits that several similarly placed persons have been taken back in service. The records transpire that the petitioner had come before this Court again for the same relief in C.W.J.C. No. 4734 of 2015 which was disposed of with the direction to the Principal Secretary, Road Construction Department to take a decision on the representations so filed, which has been dismissed by the order impugned bearing Memo No. 686 dated 17.12.2015.



I have heard learned counsel for the petitioner and learned counsel for the State.

Although a plea for parity has been made with reference to Annexure-9 to submit that two persons Brajnandan Prasad & Ram Lakhan Prasad, who were also appointed after the cut off date but have been reinstated, the distinction is that while petitioner's challenge to the termination in 2002 has failed at each stage until the division bench, the writ petition of these petitioners was allowed vide Annexure- 9 & which was followed by order of reinstatement at Annexure- 10.

A policy decision was taken by the State Government to regularize all those who had been appointed prior to 11.12.1990 and were in service on the date of enforcement of the policy dated 17.10.2013 and since admittedly, this petitioner was removed way back in the year 2002 itself, he cannot draw parity with others. The reasons assigned by the Principal Secretary at Annexure-15 to refuse reinstatement/ regularization to the petitioner is in tune with the circular dated 17.10.2013 and requires no interference. Even otherwise the legal position as to regularization is well settled and is available to only those in service. The services of the petitioner was terminated way back in 2002 with his prayer for reinstatement having been rejected until the Division Bench. In fact with the division bench



refusing to restore the review application, the termination has attained finality.

No cause for interference is made out in the circumstances discussed.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2018
Transmission Date	NA

