

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.54 of 2011

IN

Civil Writ Jurisdiction Case No. 1288 of 2004

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Nirmala Singh, w/o late Diambar Nath Singh, r/o Mohalla-B.B.S. Lane, PO-Gulzarbagh, PS-Alamganj, Dist-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sommissioner-cum-Secretary, Road Construction department, Government of Bihar, Bishbeswaraiya Bhawan, Bailey Road, Patna
3. The Engineer-in-Chief, PWD (Road Construction) Department, Government of Bihar, Patna
4. The Joint Secretary, Road Construction Department, Bihar, Patna
5. The Deputy Secretary, Road Construction Department, Bihar, Patna
6. The Chief Engineer, Ganga Pool Project, Road Construction Department, Bihar, Patna
7. The Superintnding Engineer, National Highway Circle, Patna
8. The Executive Engineer, National Highway Gulzarbagh Division, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Utsav Kumar

For the Respondent/s : Mr. Birju Prasad, Gp-13

: Mr. Ravi Kumar, AC to GP-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 13-07-2018

1. The present petition has been filed seeking review of the order *dated 05.01.2011* passed in *CWJC no. 1288 of 2004*, whereby and whereunder the writ petition has been dismissed in the following terms :-

“ Heard the petitioner, in my view, the writ petition suffers from constructive res judicata. The petitioner had a right to object and challenge the cancellation



of his absorption in the permanent establishment as was made in the 1987 with effect from 01.04.1984 but he did not do so. When subsequently five years later he was so absorbed he sought for a change of date. It was not acceded to. He now by this writ petition filed in the year 2004 virtually seeks to challenge the order sending him back to work charged establishment that was passed in the year 1987 which order he chose not to challenge earlier.

Thus, the writ petition is barred by laches and constructive res judicata and is dismissed as such.”

2. The learned counsel for the petitioner has submitted that the original writ petition was filed by the petitioner for shifting his date of regularization in the permanent establishment w.e.f. 01.04.1984 but the learned Single Judge has not appreciated the issue under consideration and has dismissed the writ petition merely on the ground of the writ petition being barred by the principles of constructive res judicata. Admittedly, the petitioner was initially



brought into the permanent establishment and regularized by an order dated 16.04.1987, however he was reverted back to the work charge establishment after cancellation of his order of regularization in the permanent establishment vide order dated 29.06.1987, which the petitioner did not choose to challenge. Nonetheless, subsequently, the petitioner was regularized in the permanent establishment w.e.f. 03.12.1992. The claim of the petitioner is that though the petitioner has been regularized w.e.f. 03.12.1992, however several junior persons to the petitioner herein have been regularized w.e.f. 01.04.1984, hence the date of regularization should be shifted to 01.04.1984.

3. I have heard the learned counsel for the parties and gone through the materials on record. Admittedly, the present review petition does not come within the framework of ***Order 47 Rule 1 of the Code of Civil Procedure*** since no new fact has been brought on record to show that there is error in the order under review dated 05.01.2011.

4. I further find that since the petitioner had chosen not to assail the earlier order of cancellation of his regularization w.e.f. 29.06.1987, it can safely be concluded that the petitioner had no grievance after regularization of his services on or before the year 1987, hence the order of regularization dated 03.12.1992 cannot be assailed by the petitioner at this juncture which is clearly barred by the principles of



constructive res judicata, as has been held by the learned Single Judge in the order under review dated 05.01.2011.

5. For the reasons mentioned hereinabove, I do not find any merit in the present petition, accordingly the same is dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2018
Transmission Date	NA

