IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7513 of 2016

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1. Subhash Chandra Bhardwaj son of Late Yugal Prasad Singh Resident of village + P.O. - Naya Nagar, P.S. Hasanpur Road, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Public Health Engineering Department, Bihar, Patna.
4. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Chief Engineer (Mechanical), Department of Public Health Engineering, Govt. of Bihar, Patna.
6. The Superintending Engineer, Public Health Engineering Circle, Begusarai.
7. The Executive Engineer, Public Health Division, Begusarai.
8. The Sub-Divisional Engineer, Barauni Sub-Division District - Begusarai.
9. The District Magistrate, Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siyaram Pandey, Adv.

For the Respondent/s : Mr. Anant Prasad Singh, S.C.15

Mr. Sanjay Kumar, A.C. to S.C.15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-02-2018

Heard Mr. Siyaram Pandey, learned counsel for the petitioner and Mr. Anant Prasad Singh, S.C.15 for the State.

The prayer in the writ petition filed under Article 226 of the Constitution of India is for issuance of a writ in the nature of mandamus commanding the respondents to regularize/absorb the petitioner on the post of Work Inspector, a Class III post with effect from 30.11.2006, the date from which the petitioner was brought under regular establishment albeit on Class IV post of Keyman- cum - Choukidar bearing Memo No.138 dated 30.11.2006 at Annexure-5 to the writ petition.

The relevant facts essential for disposal of the writ petition is that the petitioner was appointed as a dailywager on 31.03.1982 vide order present at Annexure-2 but was absorbed in the work charge establishment against the post of Work Inspector in consideration of his past services vide order bearing Memo No. 1626 dated 22.9.1988 at Annexure-3 to the writ petition.

The petitioner was sought to be reverted as a dailywager in the year 2002 and which was questioned by him along with some others in C.W.J.C.No.6514 of 2002 which writ petition was heard analogous with **C.W.J.C.No.7359 of 2002 (Ram Tapeshwar Sah Vs. State of Bihar)** and vide judgment and order passed on 13.07.2006, the batch of cases including the writ petition of the petitioner was disposed of with the direction to the State of Bihar to take steps for constituting a Committee presided by Commissioner- cum- Secretary, Public Health and Engineering Department to consider the cases of the petitioner(s) and to decide the matter in accordance with law. A copy of the judgment and order of the Division Bench is present at Annexure-12 to the rejoinder so filed on behalf of the petitioner.

It is in consideration of the case that the regularization order in question was passed on 30.11.2006 vide Annexure- 5 but the grievance of the petitioner is that instead of absorption in Class III post of Work Inspector he was absorbed on a Class IV posts of Keyman cum Chaukidar. The order of absorption dated 30.11.2006 is at Annexure-5 and the name of the petitioner appears at Serial No.5 thereof.

Feeling aggrieved the petitioner questioned the order in C.W.J.C.No.13084 of 2009 and a coordinate bench of this Court while taking note of the grievance so raised remitted the matter for a decision a fresh by the authority concerned to be taken within 2 months of receipt/production of a copy of the order. The judgment and order of the coordinate bench in the writ so filed by the petitioner is at Annexure-1 to the writ petition.

The claim of the petitioner was considered and rejected vide order dated 14.01.2010 at Annexure-8 to the writ petition. The reason assigned is that since there was no Class 3 post available it was not feasible to absorb the petitioner on Class 3 post. A copy of the order is impugned at Annexure-8 to the writ petition.

Feeling aggrieved the petitioner again approached this Court in C.W.J.C. No. 1337 of 2010 and which was disposed of vide judgment and order passed on 1.11.2013 at Annexure 10 with liberty to the petitioner to approach the Grievance Redressal Cell and to demonstrate that there was vacancy in Class III category, before them. The bench has noted that the petitioner had superannuated in the meanwhile.

The Public Grievance Cell of the respondent Department considered the claim of the petitioner and has again rejected the same vide order dated 08.01.2015 which has been placed on record at Annexure-11 to the interlocutory application. The grounds assigned for such rejection is that of the 9 posts of Work Inspector, only one is occupied and there is a stay on appointment of rest 8 posts which has been abolished by the Finance Department. It is mentioned that the one post held by the incumbent would be abolished on his superannuation. It is on such grounds that the order mentions that it was not possible to absorb the petitioner on the post of Work Inspector which was no more available. It is feeling aggrieved by such decision that the petitioner is again before this court.

I have heard Mr. Siya Ram Pandey learned counsel for the petitioner and Mr. Anant Prasad Singh learned Standing counsel No. 15. The arguments basically revolve around three circular of the State Government in the Public Health and Engineering Department. The first of such circular is bearing No.3058 dated 20.10.1984, a copy of which is enclosed at Annexure-6 to the writ petition and which inter alia provides that such of the work charge employees who have completed 5 years of satisfactory service shall be absorbed on their post by converting the post held by them as a regular post. The argument of Mr. Pandey basically revolves around this circular.

Contesting this position Mr. Singh invites the attention of this Court to a circular bearing order No. 6394 dated 23.10.1987 to submit that the Circular No. 3058 dated 20.10.1984 stood superseded in so far as it gave a blanket protection to all employed in work charge establishment for regularization by putting a cut of date of 21.10.1984 for the purpose of consideration of absorption of such employees who had completed 5 years of satisfactory service until that date.

This argument was sought to be diluted by Mr. Pandey in reference to a third circular of the department bearing No.10710 dated 17.10.2013 of the Finance Department, a copy of which has been placed at Annexure-9 to the writ petition and which is in supersession of the resolution No.6394 dated 23.10.1987. According to learned counsel the circular modifies the cut of date so fixed under the circular dated 23.10.1987. In reference to the stipulation present at paragraph 4 of the resolution dated 17.10.2013 it is submitted that all those who had been appointed in a work charge establishment on or before 11.12.1990 and had a satisfactory service were entitled for absorption in a regular establishment.

It was now the turn of Mr. Singh to inform that Clause (4) of the circular relied upon no doubt gives protection to those appointed in a work charge establishment on or before 11.12.1990 but only if they were yet in service on the date of such decision as manifest from paragraph 4(ii) and since the petitioner had already superannuated in April, 2012, the benefit of the Circular cannot be extended to him.

Mr. Pandey refers to the case of one late Phuden Prasad to submit that his case was similar to the petitioner and he was accorded benefit even though he expired prior to the invocation of the circular dated 17.10.2013.

I have heard learned counsel for the parties and perused the records.

The fact remains that even though the case of the petitioner did come within the purview of the circular No.3058 dated 20.10.1984 of the Finance Department as canvassed by Mr. Pandey but even before the petitioner could be absorbed in the work charge establishment vide order dated 20.9.1988 at Annexure-3 this circular dated 20.10.1984 had been superseded by the Circular bearing No.6394 dated 23.10.1987 of the Finance Department which gave the benefit of regularization to only those who had completed satisfactory service in a work charge establishment as until 21.10.1984. Undoubtedly, the petitioner was yet to be absorbed in the work charge establishment either on 21.10.1984 or on 23.10.1987 rather he was brought into a work charge establishment only on 22.9.1988. In view of the stipulation thus present in the resolution of the Finance Department bearing No.6394 dated 23.10.1987 restricting the benefit to only those who had completed 5 years of satisfactory service until 21.10.1984 the petitioner cannot claim benefit of the circular dated 20.10.1984. The only glimmer which comes to the aid of the petitioner is Annexure-9 which is the circular dated 17.10.2013 and extends the benefit of absorption to those who had appointed in the work charge establishment prior to 11.12.1990 as manifest from paragraph 4(i) of the circular but according to Mr. Singh, learned S.C.15 even this ray of hope alludes the petitioner in view of the stipulations present at paragraph 4(ii) which extends the benefit to only those who were in service on the date of issuance of circular i.e 17.10.2013.

In the circumstances discussed, it is to be seen whether the decision of the Grievance Cell dated 28.1.2014 impugned at Annexure-11 to the interlocutory application can be upheld because the reasons assigned therein are not exactly in tune with the legal position contested as noted above.

Mr. Pandey submits that the effect of such confusion is that the petitioner has not even been paid his pension because the respondents are in a confused state as to what would be the basis for calculation of the retiral benefits.

Having heard learned counsel for the parties, I can only observe that it is unfortunate that the retiral benefits of the petitioner has not yet been calculated even though the petitioner superannuated 6 years back. The circular(s) on record taken note of leaves no confusion. The petitioner as a work charge employee was entitled to absorption on the post he held and clause 4(ii) of the circular dated 17.10.2013 which modifies the circular dated 23.10.1987 to extend the cut of date to 11.12.1990 makes no departure from the legal position reflecting from the circular dated 20.10.1984 which was sought to be modified by the circular dated 23.10.1987 to put a cut of date 21.10.1984.

Despite the legal position discussed above, the fact remains that the petitioner has superannuated from Class IV post of Keyman cum Chaukidar w.e.f 30.4.2012 and his earlier challenge to such absorption through C.W.J.C.No.13084 of 2009 & C.W.J.C. No. 1337 of 2010 was disposed by relegating him to the department to demonstrate a vacancy in Class III post existing in the department vide Annexure 1 and Annexure-10 respectively. The attempt of the petitioner has failed vide the rejection order(s) at Annexure 8 and 11 respectively.

In the circumstances discussed where the petitioner has superannuated w.e.f 30.04.2012, there cannot be any direction to retrospectively treat the petitioner absorbed against a Class III post w.e.f 30.11.2006 when the petitioner was brought under the regular Establishment on the Class IV post of Key man cum Chaukidar vide

Annexure-5.

Having held as such and even though a Class III post absorption eludes the petitioner but his continuity all through does oblige the respondents to calculate his retiral benefits on the basis of the entire service rendered by the petitioner since after his appointment in the work charge establishment vide order dated 22.9.1988 at Annexure-3 followed by his absorption vide order dated 30.11.2006 at Annexure-5, until his superannuation on 30.4.2012.

There thus exists no confusion on this aspect and the petitioner having superannuated on 30.4.2012 from the Class IV post of Keyman cum Chaukidar, his entire service including the period spent in the work charge establishment has to be taken note of for the purpose of calculation of his retiral benefits in view of the circular dated 27.3.1987 reiterated vide circular No. 1393 dated 31.3.2004 of the Finance Department a copy of which is produced during course of hearing.

Let steps accordingly be taken by the respondents for calculation and payment of the post retiral benefits of the petitioner within 3 months from the date of receipt/production of a copy of this order.

The writ petition is disposed of with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2018
Transmission Date	NA