

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2181 of 2013

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1. SHIV SHANKAR CHOUBEY S/O LATE RAM JANAM CHOUBEY R/O VILLAGE- CHOUBEYPUR, P.O.- WAMBHAWAR, P.S.- PIRO, DISTRICT- ARA (BHOJPUR)
 2. GUPTESHWAR SINGH S/O LATE KISHUNI SINGH R/O VILLAGE + P.O.- SOMRANNA, P.S.-CHARPOKHARI, DISTRICT- ARA (BHOJPUR)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE COMMISSIONER-CUM-SECRETARY TO GOVT. PUBLIC HEALTH ENGINEERING DEPARTMENT, BISHESHWARIAYA BHAWAN, BAILEY ROAD, PATNA
2. THE CHIEF ENGINEER (MECHANICAL) PUBLIC HEALTH ENGINEERING DEPARTMENT, BISHESHARIYA BHAWAN, BAILEY ROAD, PATNA
3. THE SUPERINTENDING ENGINEER PUBLIC HEALTH ENGINEERING CIRCLE, ARA
4. THE EXECUTIVE ENGINEER PUBLIC HEALTH DIVISION, ARA

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Adv
For the Respondent/s : Mr. MANIKANT MISHRA, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-01-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 14.02.2012 passed by the Chief Engineer (Mechanical) Public Health Engineering Department, Bihar, Patna, by which the representation of petitioners pursuant to the order dated 07.04.2011 passed in CWJC No. 9495 of



2010 had been rejected in which the petitioners have challenged the order dated 18.07.2007 issued by the Executive Engineer, Public Health Engineering Department, Arrah, by which their services were reverted to daily wager Plumbing Khalasi from the post of regular Plumbing Khalasi.

3. Briefly stated, the case of the petitioners as stated in the petition is that they were appointed by competent authority on vacant post of Nalkup Khalasi on 01.01.1982, and thereafter in the light of the decision of Departmental Selection Committee dated 11.12.1987, they were absorbed in regular pay scale of Rs. 350-425/- on 18.04.1988 in view of policy decision of the Government that after working for 5 years as daily wager employee, they are entitled for regularization. After their absorption in regular pay scale under the work charge establishment they were granted annual increment from time to time and revised pay scale and Service-Book of the petitioners were also opened and GPF and LIC amount were being deducted from their monthly salary. It has been further stated that absorption in the work charge establishment was examined



by the State Government in its cabinet decision dated 17.03.1998 and payment of arrears of salary and future payment of salary was taken in the Cabinet meeting. Subsequently, by memo no. 2322 dated 13.04.2002, the services of the petitioners and similarly placed employees were reverted as daily wager on the basis of circular of Finance Department dated 23.10.1987 and aforesaid reversion was challenged by the petitioners and others in C.W.J.C No. 706 of 2002, and the said petition was made analogous with C.W.J.C No. 7359 of 2002 and by order dated 13.07.2006, Division Bench directed to constitute committee of Secretaries to look into the matter of regularization of petitioners and others in the light of Constitution Bench judgment of the Apex Court in the case of *Secretary State of Karnataka vs Uma Devi and Ors*, reported in 2006(2) PLJR SC 363.

4. Against the order of reversion from regular employee of work charge establishment to that of daily wager in 2002 on the basis of Finance Department circular dated 23.10.1987, writ petitions were filed and the writ court set aside the order of reversion from regular employee



to daily wage employee and directed State Govt. to consider the petitioners as regular employee of work charge establishment. The order passed by the writ court was confirmed in L.P.A and S.L.P filed by the State was also dismissed. As such the petitioner continued to be the regular employee under work charge establishment. On the basis of direction of Division Bench of this Court, the three member Committee was constituted by the department and the case of the petitioners were considered by the Committee and petitioners were recommended for their absorption in regular establishment, and on the basis of such recommendation petitioners were appointed as regular employee in regular establishment on 01.12.2006. The petitioners continued to work in the regular establishment as regular employee, when suddenly by order dated 17.07.2007 they were again reverted to the post of daily wagger which they challenged in C.W.J.C No. 9495 of 2010, which was disposed of on 07.04.2011 directing the Chief Engineer to pass a reasoned order on the representation filed by the petitioners and thereafter by the order dated 14.02.2012, Chief Engineer (Mechanical), Public Health



Engineering Department, rejected the claim of the petitioners and did not interfere in the order dated 18.07.2007, reverting the petitioners from regular employee to that of daily wager and against the said order the petitioners have preferred this writ petition.

5. The respondents have filed their counter affidavit in which they have admitted that the petitioners were appointed as daily wager on 01.01.1982 and worked as daily wage employee till 17.04.1988. By order dated 18.04.1988, the petitioners were absorbed as regular employee in the work charge establishment and by order dated 13.04.2002 issued by the Commissioner cum Secretary of the department in view of the resolution of the Finance Department dated 23.10.1987 were reverted back to daily wage employee. The order of reversion dated 13.04.2002 was challenged by the writ petitioner in CWJC No. 706 of 2002 and the same was made analogous with 165 cases and by order dated 13.07.2006 the Division Bench of the High Court constituted a committee of Secretaries where the petitioner were directed to place their claim and their case for regularization be decided by the



said Committee as per Constitution Bench Judgment of the Apex Court in the case of *Uma Devi (Supra)*. In compliance of the said order a three member committee was constituted in the department presided by the Secretary, Public Health Engineering Department, Government of Bihar. As per the guidelines of the State Government those who had been working as daily wager and as well as those who were terminated prior to cut off date and those who were working as regular employee in work charge establishment and their services were reverted as daily wager were required to be considered for absorption/regularization against newly created sanctioned and vacant post. The petitioners were absorbed and regularized on class-IV post vide memo dated 1123 dated 28.11.2006 on the post of Plumber Khalasi by office order no. 194 dated 01.12.2006 and memo no. 1624 dated 01.12.2006. Subsequently, by order dated 01.05.2007 passed in M.J.C No. 1030 of 2006 (Sushil Kumar Pandey & Ors vs the State of Bihar) the matter was reconsidered and in the revised list, names of the petitioners did not figure and as such in compliance of the Memo No. 591 dated 17.07.2007 they were reverted to daily wager by order



dated 18.07.2007, which they have challenged in the writ petition being C.W.J.C No. 9495 of 2010.

6. After hearing the rival contention of the parties and going through the impugned order dated 14.02.2012, it is admitted that the petitioners were appointed on 01.01.1982 as daily wager and from 18.04.1988 to 12.11.2001 they worked as regular employee under work charge establishment on the vacant post created and sanctioned by Department on 12.06.1985 (Annexure-13) and from 13.11.2001 to 30.11.2006 in the work charge establishment as regular employee as order of reversion from regular to that of daily wager was set aside by High Court and they were deemed to continue as regular employee of work charge establishment till their regularization under regular establishment (Annexure-4). The State Government vide memo NO. 925 dated 16.11.2013 (Annexure-14) itself has decided on the basis of order of High Court to pay difference of salary for the period 2002-2006 treating them as regular employee under work charge establishment. It has been held that the petitioners have been appointed by the competent authority



and they had all the qualifications and worked for more than 10 years but it has been stated that the post was not sanctioned, which cannot be accepted in view of Annexure-13. The petitioners have been working on the same post from 1982 either as daily wager or regular employee of work charge establishment and thereafter regular employee in permanent establishment, as such the reasons by which the claim of the petitioners has been rejected is not sustainable. Secondly, after petitioner being regularized on the basis of three man committee they were not given any show cause opportunity to defend their case and they were reverted as daily wager without any notice and the allegations of petitioners that the petitioners have been reverted to daily wager while persons junior to them, have been regularized, has not been controverted by the respondents. The other reason for denying the claim of the petitioners that there was no post at the time of initial appointment is also incorrect and in spite of ban by finance department circular dated 23.10.1987, by which appointment in work charge establishment was banned is also not applicable in the case of the petitioners, as such the same has been decided up to the



Apex Court and the appointment of petitioners as daily wagger and thereafter as regular employee in the work charge establishment has been affirmed by the Apex Court (Annexure-4).

7. For the reasons, as stated above the impugned order 14.02.2012 is set aside, and the petitioners will be deemed to be in continuous service as regular employee in regular establishment from the date of their reversion by order dated 01.04.2007, till their subsequent regularization during pendency of writ petition on 30.06.2014 (Annexure-15). Petitioners will be treated to be regular employee of the Department from the date of their regularization from 01.12.2006 and are entitled to all benefits of regular employee including continuity of service and difference of salary from the period from 01.04.2007 till 30.06.2014.

The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.01.2018
Transmission Date	N.A.

