

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.800 of 2017

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Bindeshwar Mahto Son of Soman Mahto Resident of Village Bathnaha,P.S.
Bathnana, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Deputy Secretary,Road Construction Department, Government of Bihar, Patna.
3. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur.
4. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha, Adv.

For the Respondent/s : Mr. Himanshu Kumar Akela, AC to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 20-03-2018

The petitioner herein by the present writ petition has prayed for quashing the letter dated 12.02.2014 whereby and whereunder the services of the petitioner for the period 20.02.1995 to 20.08.2012 has not been counted and instead he has been treated to be a fresh appointee resulting in forfeiture of his entire past services and the consequential benefits. It has been further prayed for directing the respondents to pay the salary for the period 20.02.1995 to 20.08.2012, during which the petitioner had been arbitrarily kept out of service.

2. The short facts of the case are that the petitioner herein was initially engaged as a daily wage worker on Class-IV post and



subsequently he was retrenched. Thereafter, the petitioner had filed a representation to permit him to continue on daily wage. The Engineer-in-chief cum Additional Secretary, Road Construction Department had then by his letter dated 20.07.1987 directed the Executive Engineer, Road Division, Sitamarhi to engage the petitioner as a daily wager on Class-IV post. The petitioner was then appointed as a road labourer vide letter dated 22.06.1987. Subsequently, the Executive Engineer vide his office order dated 24.11.1987 appointed the petitioner in the work charged establishment on a regular pay scale. In between, there was some confusion with regard to the appointment of the petitioner to the effect that as to whether he had been appointed on compassionate ground or not? The respondent Executive Engineer by letter dated 20.02.1995 had terminated the services of the petitioner by stating that the petitioner had been wrongly appointed on compassionate ground. The said order of termination dated 20.02.1995 was challenged before this Court in CWJC No. 115 of 1997 and the same was disposed of by an order dated 09.09.2010, whereby and whereunder the Superintending Engineer, Road Construction Department, North Bihar Road Circle, Muzaffarpur was directed to enquire into the genuineness or otherwise of letter no.7846, with a further direction that in case the said letter is found to have been issued by the Engineer-in-chief, Road Construction



Department directing appointment of petitioner as Road Labourer, appropriate orders be passed in accordance with law within a period of three months from the date of receipt/ production of a copy of the said order.

3. Apparently, the respondents failed to comply with the aforesaid direction issued by this Court leading to the filing of the contempt petition by the petitioner herein bearing MJC No. 2039 of 2012 which was disposed of as withdrawn by an order dated 23.8.2012 in view of issuance of office order bearing Memo No. 1850 dated 21.8.2012 whereby and whereunder the respondents had appointed the petitioner on the vacant post of peon under the Road Division, Sitamarhi. The petitioner is said to have joined the said post on 24.8.2012 and thereafter the petitioner has been continuously discharging his duty to the satisfaction of the authorities concerned, but his salary has been fixed treating him as a fresh appointee and thereby the entire past services have not been counted, resulting in the petitioner being prejudiced gravely. The petitioner had filed a representation before the various authorities, however, vide letter no. 274 dated 12.2.2014, the respondent no.3 has communicated to the petitioner herein that since the petitioner was appointed on the post of peon vide letter dated 21.8.2012 and he had not worked in between the period 20.02.1995 to 20.08.2012, the said period cannot be



counted for the purposes of his service period nor he can be paid any salary for the said period.

4. The learned counsel for the petitioner submits that the petitioner was kept out of service arbitrarily in between the period 20.02.1995 to 20.08.2012 i.e. from the date of cancellation of appointment of the petitioner up to the date of his appointment on the post of peon, hence the petitioner is entitled for back wages for the said period as also the consequential benefits. In this regard, the learned counsel for the petitioner has relied upon Judgment of the Hon'ble Apex Court reported in (2013) 10 SCC 324, orders of this Court passed reported in 2014(4) PLJR 544, 2009(4) PLJR 396 and 2007(2) PLJR 239.

5. Per contra, the learned counsel for the respondents has submitted that since the petitioner has neither challenged the order dated 21.8.2012 by which the petitioner has been appointed afresh on the post of peon nor the present case of the petitioner is a case of withdrawal of the order dated 20.02.1995 by which the appointment of the petitioner was cancelled nor the present case is a case of reinstatement of the petitioner herein, the petitioner is neither entitled for continuity in service nor for back wages for the said period w.e.f. 20.02.1995 to 20.08.2012.

6. I have heard the learned counsel for the parties and



gone through the materials on record. Apparently, the petitioner had worked in Government service from 24.11.1987 to 18.2.1995 and thereafter, his appointment was cancelled by a letter dated 20.2.1995 on the ground that neither his initial appointment letter no. 2278 dated 20.4.1987 nor his appointment in the work charged establishment on Class IV post made by letter no. 7846 dated 23.11.1987 was issued by the department. This Court, in the earlier round of litigation, in its order dated 9.9.2010 had observed that since no verification was made with regard to the genuineness of the aforesaid letters of appointment of the petitioner herein nor any show cause notice on the said aspect was given to the petitioner herein, it would be proper for the department to conduct an enquiry with regard the genuineness of the said letters by verifying the genuineness of the letter no. 7846 and another letter by examining relevant file and issue register as also verifying the signature of the said Engineer in Chief on the said letter with his admitted signature. This Court had further directed that in case letter no. 7846 is found to have been issued by the said Engineer in Chief, the order of appointment of the petitioner shall be passed. However, this Court had refrained from quashing the order of cancellation of appointment on 20.2.1995. It appears that upon an enquiry, the respondents found that the letter/ order no. 7846 issued by the Engineer in Chief cum Additional Commissioner cum Special



Secretary, Road Construction Department could not be verified since the same had become traceless and in absence of the original, genuineness thereof was not possible as had been opined by the Incharge Director, FSL, Patna. It appears that under the threat of contempt, the respondents had appeared before this Court in person and assured this Court that the appointment letter would be issued to the petitioner within one week, although the genuineness of the letter/ order no. 7846 was not possible to be verified, as would be apparent from order dated 16.8.2012 passed in MJC No. 2039 of 2012. It is in this manner that the order of appointment of the petitioner dated 21.8.2012 on the post of peon came into being and the petitioner was thereafter appointed on the post of peon. It is thus clear that initial appointment of the petitioner in the year 1987, on the strength of which he had continued up to 19.2.1995, was already under cloud and even up to this date it is a mystery as to whether the letter of appointment of the petitioner bearing letter no. 7846 / other letter of the said period are genuine or fake. Nonetheless, the fact remains that neither the letter of cancellation of appointment of the petitioner dated 20.2.1995 has been annulled by any court of law till date nor the same has been withdrawn by the respondents and even the petitioner herein has failed to challenge the letter dated 21.8.2012 whereby and whereunder though, the petitioner has been appointed afresh on the



post of peon, but neither he has been extended the benefit of interregnum period, during which he was on duty, nor he has been shown to have been reinstated in service.

7. Now, coming to the judgments referred to by the learned counsel for the petitioner, it is enough to state here that the same are not on the issues arising in the present case and do not even remotely concern the subject matter of the present case.

8. Having considered the facts and circumstances of the present case, I am of the opinion that the petitioner is neither entitled to continuance in service for the purported break in service in between the period 20.02.1995 to 20.08.2012 nor he is entitled to back wages for the said period, firstly on the ground that neither order cancelling the appointment of the petitioner dated 20.2.1995 has ever been annulled by any court of law nor there is any order, which has been issued by the respondents directing for reinstatement of the petitioner herein, whereas on the contrary the petitioner has been ordered to be appointed afresh on the post of peon by an order dated 21.8.2012, which has also not been challenged ever by the petitioner herein leading to the one and only conclusion that the petitioner was/is satisfied with his fresh appointment rather than him being reinstatement in service and secondly, there is no pleading in the entire writ petition to the effect that during the said period 20.02.1995



to 20.08.2012, the petitioner was not gainfully employed elsewhere. However, in the interest of justice and keeping in mind the fundamentals of service jurisprudence as also the principle of equities, I deem fit and appropriate to direct that the period of service rendered by the petitioner at very inception of his career i.e. from 24.11.1987 to 19.2.1995 shall be counted for the purposes of grant of pensionary benefits to the petitioner herein.

9. The writ petition is disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	8.2.2018
Uploading Date	20.03.2018
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