

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4258 of 2011

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Chhotan Ram Son Of Late Paikar Ravidas Residento F Village Islampur
(Kajichak), P.O. Islampur, P.S. Islampur, Distt. Nalanda

.... Petitioner

Versus

1. The State Of Bihar Through Its Commissioner-Cum-Secretary To Govt., Water Resources Department, Irrigation Building, Old Secretariate Campus, Patna
2. The Engineer-In-Chief Cum-Special Secretary, Water Resources Department, Irrigation Building Old Secretariate Campus, Patna
3. The Engineer-In-Chief, Water Resources Department, Govt. Fo Bihar, Anisabad, Patna
4. The Superintending Engineer, Flood Control Punpun Circle At Patna, Department Of Water Resources, Govt. Of Bihar, Anisabad, Patna
5. The Executive Engineer, Ganga Sone Flood Security Division, Digha, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh

For the Respondent/s : Mr. Kundan Bhadur Singh SC22

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 15-01-2018

Heard learned counsel for the petitioner and
learned counsel representing the State.

2. The petitioner, in the present, case is seeking a direction to the State respondent to consider his case for absorption in permanent establishment. It is the claim of the petitioner that he is working as daily wager on a sanctioned vacant post after his appointment by a competent authority since 01.09.1979 continuously and is discharging his duties satisfactorily for the last 38 years by now. It is further alleged in the writ application that persons junior to him and similarly situated have been absorbed and they are enjoying benefits of



the service but the claim of this petitioner has been ignored.

3. Learned counsel for the petitioner has drawn attention of this Court towards the statements made in paragraph-5 & 6 of the writ application wherein a specific statement has been made that the petitioner was duly appointed by the competent authority on vacant post of Jeep Driver on daily wages in the year 1979, prior to the cut off date fixed by the State Government i.e. 11.12.1990 in the Flood Control Division, Mokama. It is also pleaded that petitioner had been appointed against the sanctioned vacant post and is working against the said post for the last 31 years. It is submitted by learned counsel that the petitioner has also been granted minimum scale of pay since 28.08.1988. In paragraph 13 of the writ application, certain names have been disclosed stating that even though they are juniors to the petitioner, they have been absorbed and are given all the benefits of the permanent establishment by pick and choose method.

4. In course of hearing, learned counsel for the State brought on record a copy of the order dated 12.07.2011 vide Annexure-C to the supplementary counter affidavit and contended that in fact the case of this petitioner along with



some others were considered in the light of the resolution No. 639 dated 16.03.2006 and letter no. 851 dated 14.02.2008, as also in the light of the judgment of the Hon'ble Apex Court in the case of **Secretary State of Karnataka Vs. Uma Devi** reported in **(2006) 4 SCC 1**, but the petitioner could not be considered because he failed to submit a reply/information on the parameters which were called for.

5. Referring to the said order, learned counsel for the State has drawn attention of this Court towards concluding part of the order dated 12.07.2011, which says that the persons mentioned at serial no. 1 to 31 & 33 had requested for a copy of the resolution no. 639 dated 16.03.2006 and letter no. 851 dated 14.02.2008, as also copy of the judgment, but they did not submit anything with regard to the parameters for consideration. The order refers the serial number which includes serial no. 27 where the name of the petitioner is mentioned but except that it nowhere shows that any consideration has been given to the case of this petitioner in particular.

6. In the opinion of this Court, case of this petitioner was not required to be rejected only on the ground that they had failed to submit the required parameters or



information with regard thereto. The order should have contained reasons dealing with the case of the petitioner on the basis of the materials which were available in the department. It seems that the department has not taken any pain to find out the facts or the parameters looking into its own records. The order as contained in Memo No. 2371 dated 12.07.2011 does not inspire confidence particularly when the petitioner claims that he is still working for last 37 years and is getting regular pay scale. The respondent authorities were required to consider the case taking their time by tracing out the records or by giving one more opportunity to the petitioner to submit the information with regard to the parameters which were required to be considered. The order as contained in Memo No. 2371 dated 12.07.2011 is thus required to be interfered with.

7. Even though, the petitioner has not challenged this order specifically in the writ application because admittedly a copy of this order was not supplied to the petitioner till filing of the supplementary counter affidavit on behalf of the respondent nos. 4 & 5, that too after a direction issued by this Court on the last date of hearing, in the interest of justice, this Court would like to mould the relief, as prayed for, by setting aside the order contained in Memo No. 2371



dated 12.07.2011, in so far as it relates to the present petitioner.

8. The respondent authorities shall consider the case of the petitioner giving him an opportunity to produce the documents or the required information and to submit his submission as also the respondent authorities will give an opportunity of hearing to the petitioner and shall pass a reasoned order considering all aspects of the matter within a period of four months from the date of receipt/production of a copy of this order.

9. This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.01.2018
Transmission Date	NA

