

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13460 of 2010

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Krishna Nand Acharya S/O Sri Jiva Nand Acharya R/O Vill Karma,
P.S.Puraini , Distt-Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Engineer, Building Construction Department North Bihar, Patna
2. The Principal Secretary, Department Of Finance Govt. Of Bihar, Patna
3. The Superintending Engineer, Building Construction Department Saharsha
4. The Executive Engineer, Building Construction Department Saharsha Circle , Saharsha
5. The Executive Engineer, Building Construction Department Madhepura Circle, Madhepura
6. The Executive Engineer P.W.D. (Building Construction Department) Purnea
7. The Assistant Engineer , Building Construction Department Uda Kishanganj, Madhepura

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv. Mr. Satya PraKASH, Adv. Mr. Manish Prakash, Adv. Mr. Sachin Kumar, Adv.
For the Respondent/s	:	Mr. Jainendra Kumar Sinha, AC to SC17

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 09-04-2018

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

In this case, the prayer has been made for quashing the Memo No. 784 dated 10.5.2010 issued under the signature of Chief Engineer, Building Construction Department, Government of Bihar, Patna, whereby and whereunder, the regularization of the services of the petitioner has been refused in view of the circular no. 3058 dated 22.10.1984 and 6394 dated 23.10.1987.



The petitioner was appointed in the Work Charge Establishment on 5.2.1980 in the office of Executive Engineer, Building Construction Department, Purnea, whereafter, he was transferred vide letter no. 226 dated 7.10.1980 in the Building Construction Department, Saharsa Division, after separation of Saharsa Division, the petitioner was shifted to Madhepura Division vide letter no. 28 dated 8.2.1984 and, accordingly, the work was allotted to the petitioner vide office order no. 15 of 1987-88. The Government of Bihar vide notification dated 31.10.1990 constituted a Committee to consider the matter relating to regularization of services of the Work Charge employee in the Department in the light of Resolution no. 5074 dated 20.9.1990. In pursuance of that notification, the Executive Engineer, Madhepura has submitted the report dated 25.5.1990 and letter no. 651 dated 30.5.1990, recommended his regularization, also submitted its report dated 1.6.2000 giving details of the period the petitioner has worked and the Superintending Engineer vide letter dated 97 dated 15.2.1993 referred the matter to the Chief Engineer for consideration of regularization of the services of these petitioner and others. It appears that the Government of Bihar vide letter dated 6.9.2002 directed all the Executive Engineer to furnish the detail of daily wager employees as Work Charge employee, the



basic idea was to grant status of regularization, whereafter, the petitioner wrote a letter dated 10.3.2003 to the Chief Engineer for regularization of services. The petitioner again addressed a letter to the Secretary, Building Construction Department for regularization in services and he approached different authorities for his redressal of the grievances. When the petitioner could not get a favourable result was compelled to approach this Court in C.W.J.C. No. 713 of 2009 and the Court directed the petitioner to file a representation and, in turn, directed the respondent to consider the representation of the petitioner and take a decision in accordance with law whereafter the petitioner filed a representation to the Principal Secretary, Department of Building Construction Department, Government of Bihar giving entire fact and the manner he has been deprived of the benefit of regularization in service and, ultimately, the Chief Engineer vide letter dated 10.5.2010 rejected the claim of the petitioner placing reliance on the letter no. 3058 dated 22.10.1984 and 6394 dated 23.10.1987.

It has been mentioned in the pleading that certain persons who were appointed later on to the petitioner, namely, Raj Bihari Rai, Santosh Chaudhary, Gaurang Rai were appointed on Work Charge Establishment on 7.4.1980, 1.4.1980 and 14.3.1980 were regularized in service much earlier on 24.11.1990,



24.11.1990 and 23.12.2009 respectively and has also made a statement that several others have also been regularized in service and the petitioner has illegally been deprived of such benefit, placing reliance on the old circular when the new circular has extended the cut-off date up to 11.12.1990.

Learned counsel for the petitioner submits that he has continued to discharge the duty from initial period in the Workcharge Establishment and he was transferred from one place to another and has also superannuated from service from the Department and never any complaint was made against him nor any show-cause or proceeding was initiated for any misconduct. The Chief Engineer misdirected himself in placing reliance on the old circular ignoring the subsequent circular whereof the cut-off period has been extended to 11.12.1990.

Learned counsel for the State has seriously objected the claim of the petitioner and submitted that the petitioner has not discharged the duty continuously in terms of the circular dated 20.10.1984 and 23.10.1987, rightly his case was not taken into consideration.

It has not been disputed by the State anywhere that the petitioner has appointed in a Work Charge Establishment in the year 1980 and continued on the same post, when other persons



junior to the petitioner who were appointed subsequently has been regularized much earlier, the case of the petitioner was rejected placing reliance on the old circular when the cut-off date has been extended to 11.12.1990.

In that view of the matter, the order of the Chief Engineer dated 10.5.2010 is quashed.

There is no denial of the fact by the State that the junior to the petitioner have been regularized much earlier, but the case of the petitioner has been rejected, in such a situation, it is the duty of the State and its officials to see if any employee is working since earlier, he should also be given the same benefit as has been given to the juniors.

Accordingly, this Court directs the Chief Engineer to consider the case of the petitioner. If any person junior to him has been regularized, as stated in the pleadings of the writ application, in such circumstances, the petitioner cannot be deprived of the same benefit from the date the juniors have been given the benefit of regularization and this Court, further directs the respondents to take a decision within a period of three months from the date of receipt/production of a copy of this order.

For convenience, this Court directs the petitioner to file a representation and the Chief Engineer, Building Construction



Department will consider the same and take a decision within the
aforesaid period of three months.

In the result, this writ application stands allowed to the
extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2018
Transmission Date	NA

