

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3550 of 2011

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Vijay Kant Jha, S/O Late Pheku Jha, Resident Of Village- Katsari Brit, P.O-
Pardeshiya, P.S- Sheohar, District- Sheohar.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner-Secretary-Cum-Special Officer (Traffic), Road Construction Department, Government of Bihar, Nirman Bhawan, Patna.
3. The Deputy Secretary, Road Construction Department, Government of Bihar, Nirman Bhawan, Patna.
4. The Engineer-In Chief, Road Construction Department, National Highways, Bihar, Patna.
5. The Chief Engineer, Road Construction Department, National Highways, Bihar, Patna.
6. The Superintending Engineer, National Highways Circle, Road Construction Department, Muzaffarpur.
7. The Executive Engineer, National Highways Division-2, Road Construction Department, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Adv. Mr. Md. Anisur Rahman, Adv. Mr. Md. Akram Naiyer, Adv.
For the Respondent/s	:	Mrs. Anuradha Singh, SC-21 Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 10-01-2018

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

2. Petitioner has moved this Court seeking quashing of
the office order bearing Memo NO.1155 dated 20.09.2010 issued by
the respondent no.7, by which the petitioner has been terminated from
service from the post of Toll Treasure Guard with immediate effect.



He has also prayed for quashing the letter no.13740 dated 16.09.2010 issued by the respondent no.3 to respondent no.7 directing him to terminate the services of the petitioner with immediate effect after making payment for the period worked by him. The petitioner has claimed reinstatement with full back wages of the post held by him and also for directing the respondents to make payment of the arrears of salary for 30 months not paid to him for which he has worked.

3. Learned counsel for the petitioner submits that it is not in dispute that the petitioner was initially engaged as a daily wager between the years 1979-80 as Toll Collector at Dhananjay Bridge, Rajauli under the Road Construction Department, Government of Bihar. When a question mark was raised over his service and livelihood, he moved this Court in CWJC No.1312 of 1981 along with others (Jageshwar Ram and others Vs. The State of Bihar and others) and a coordinate Bench of this Court disposed of the said writ application vide order dated 30.07.1986 directing the respondents to take efforts to accommodate the petitioner at some other place because they will be rendered jobless. Order also says that the learned counsel for the petitioner and the State do not object to this.

4. Petitioner was thereafter continued as daily wager in toll collection work at different places. Later on, he was adjusted at Dehri Circle for collection of toll which will be evident from



Annexure-2 to the writ application. Petitioner claims that pursuant to the order of this Court passed in CWJC No.1312 of 1981 the respondent no.5 came out with letter no.303 dated 28.01.1988 issued to the Superintending Engineer, National Highways Circle, Dehri (Annexure-3 to the writ application) directing to convert the services of the nine persons including the present petitioner who were working on daily wage basis into the sanctioned class-IV posts under the work charged establishment. It was also directed to verify about their initial appointment date.

5. It is stated that vide Annexure-3 which is a letter no.303 dated 28.01.1988 the Chief Engineer, National Highways, Road Construction Department referring the CWJC No.1312 of 1981 directed the Superintending Engineer, National Highways Anchal, Dehri to convert 9 daily wagers including the petitioner into the sanctioned class-IV posts which was accordingly done and petitioner continued in the work charge establishment against a sanctioned class-IV post.

6. It is contended that as the salary of the petitioner and others were not being paid for a long time since 1997, they had to move this Court in a writ application being CWJC No.15745 of 2007. A coordinate Bench of this Court vide order dated 07.12.2009 (Annexure-8) recorded the statement of learned counsel for the State



that payment of salary to the petitioner for the period up to March, 2008 has already been made and based on that statement the Court observed that submission of the learned counsel for the State would really ventilate the grievance of the petitioner raised in the writ application.

7. Learned counsel for the petitioner submits that in fact the statement made before this Court was not correct and the petitioner was compelled to file a contempt application bearing MJC NO.3285 of 2010. This Court looked into the matter seriously and only after intervention of the Court the petitioner was paid salary, but with certain misconceived calculation. These submissions are duly reflected from the statements made in the writ application.

8. Learned counsel for the petitioner submits that in this way the petitioner worked for eight years on daily wage basis and about 22 years in work charge establishment on a sanctioned vacant post in a pay-scale pursuant to his appointment by a competent authority and at this stage as the petitioner was agitating the issue of non-payment of salary and moved this Court in contempt jurisdiction, the State and its authorities acted in a mala fide manner to remove the petitioner in the name of government's policy dated 23.10.1987. It is submitted that earlier the Finance Department vide its Resolution no.6394 dated 23.10.1987 had decided that those who had worked for



five years up to 21.10.1984 regularly and satisfactorily after being engaged by the competent authority be regularized as per given conditions and henceforth no appointment be made in the work charge establishment. It is an admitted fact acknowledged by the government in it's subsequent resolution that despite this ban appointments were made and ultimately the government extended the cut-off date from 23.10.1987 to 11.12.1990. Learned counsel submits that at this stage when the petitioner agitated the matter relating to payment of his salary before this Court, the State respondents decided to remove him from service on the ground that he was appointed in the work charge establishment after 23.10.1987.

9. Submission is that it is a case of mala fide removal of the petitioner in law if not in fact inasmuch as the respondents have by doing so have negated the order of this Court passed in CWJC No.1312 of 1981 disposed of on 30.07.1986 wherein a direction was issued to take efforts to accommodate the petitioner, which the respondents accepted and pursuant to that the petitioner was accommodated initially as daily wager and then against the sanctioned vacant class-IV post of work charge establishment by the competent authority. He has drawn the attention of this Court towards Annexure-3 which is a letter dated 28.01.1988 by which the petitioner who was daily wager amongst the 9 daily wagers mentioned in the said letter



was converted into class—IV employees in the work charge establishment against the sanctioned post, letter specifically mentions it's subject as CWJC No.1312 of 1981 (Jageshwar Rai Vs. the State of Bihar). Petitioner submitted that what was done vide Annexure-3 was pursuant to the directions and observations of this Court and hence having retained the petitioner for a period of 22 years thereafter in the work charge establishment, removal of petitioner in the garb of the Finance Department letter dated 23.10.1987 was a malafide exercise of power.

10. Learned counsel has further relied upon an office order dated 24.02.2015 issued by the Road Construction Department, Government of Bihar (Annexure-21 to the rejoinder affidavit) which has been issued in compliance of the order dated 27.03.2014 passed in CWJC No.15879 of 2005 whereby the department has reinstated the three work charge employees who were removed on the same ground that they were engaged after 23.10.1987. Learned counsel submits that in the said case those who were working in the work charge establishment but were not regularized while others were regularized, they moved this Court in CWJC No.15879 of 2005 seeking a relief to issue a direction to the respondents to regularize the services of the petitioner, their services were terminated during pendency of writ on the same ground that they were engaged after 23.10.1987. It is further



submitted that the said writ application came for hearing on 27.03.2014, by that time the government had changed its policy and the Finance Department had already issued resolution as contained in memo no.10710 dated 17.10.2013 by which the cut-off date had been extended to 11.12.1990. This Resolution acknowledges the fact that many work charge workers who were engaged after 23.10.1987 had been regularized.

11. In view of all these developments by virtue of the government's policy, a stand was taken on behalf of the State accepting the existing position fairly that by virtue of the extended cut-off date the petitioners of the said case would also come within the consideration zone. Submission of the learned counsel is that the said stand of the State is duly reflected in the order dated 27.03.2014 passed by a coordinate Bench of this Court. Learned counsel submits that in the said case also the solitary ground of removal was that the petitioners were appointed after 23.10.1987 as in the case of the petitioner. Learned counsel therefore, submits that the impugned order by which the petitioner has been terminated is liable to be set aside and he should be reinstated in service with all consequential benefits.

12. On the other hand, learned counsel representing the State submits that removal of this petitioner is in accordance with the government's policy dated 23.10.1987 wherein those who were



engaged after cut-off date were not required to be retained in service. Learned counsel further submits that no doubt in the case of Amulya Kumar and others Vs. the State of Bihar and Ors. being CWJC No.15879 of 2005 disposed of on 27.03.2014 by a coordinate Bench of this Court a stand was taken on behalf of the State that in view of the extended cut-off date (11.12.1990) by virtue of resolution of the Finance Department contained in memo no.10710 dated 17.10.2013, the petitioners in said case were eligible to be considered and their termination of service during the pendency of the writ application would not come in the way of consideration of the cases, but so far as the present case is concerned, here the termination of the service of the petitioner has not taken during the pendency of this writ application and therefore it would be distinguished on this ground.

CONSIDERATION

13. I have considered the rival submissions at the bar and perused the records. The sheet anchor of the argument of the petitioner is the fact that earlier when he was about to be terminated, he had moved this Court in CWJC No.1312 of 1981 which was disposed of in terms of the order dated 30.07.1986 as contained in Annexure-1 to the writ application. The Hon'ble Court in then prevailing circumstances and there being no objection, took a view that the State should take efforts to accommodate the petitioner at



some other place. Pursuant to the order dated 30.07.1986, the petitioner along with others were continued and vide Annexure-3 dated 28.01.1988 to the writ application the status of petitioner was changed from that of a daily wager to an employee of the work charge establishment against a sanctioned class-IV post. This has been done by the Chief Engineer, National Highways, Road Construction Department, Bihar on 28.01.1988 being the competent authority.

14. A question would arise as to whether removal of the petitioner after a period of 22 years on the ground that he was engaged after the cut-off date (23.10.1987) as per the then policy of the government would be just and proper? It would also lead to a question as to whether the action of the State respondents in removal of the petitioner in the garb of policy of the government dated 23.10.1987 after retaining him for a period of 22 years consciously and pursuant to the order and observation of this Court as contained in Annexure-‘1’ is a mala fide removal as pleaded by the petitioner in law if not in fact.

15. A perusal of the pleadings and the documents available on the record would show that Annexure-3 which is a letter dated 28.01.1988 and by which the petitioner along with others were was placed in the work charge establishment against vacant sanctioned class-IV post was issued with reference to the order passed



by this Court in CWJC No.1312 of 1981 (Jageshwar Rai Vs. State of Bihar). This clearly shows that it was a case of conscious adjustment of the petitioner pursuant to the order of this Court, vide Annexure-3 to the writ application. It has neither been pleaded and cannot be pleaded by the State and its authorities that they were not aware of the government guidelines dated 23.10.1987 when Annexure-3 to the writ application was issued. Thus, according to me, they cannot be allowed to argue that after 22 years of continued service of the petitioner against sanctioned class-IV post by the competent authority, the petitioner may be removed for the sole reason in the garb of the government's guidelines dated 23.10.1987. Such unbridled and unreasonable power cannot be conferred upon the authorities who have acted consciously and in terms of expectation expressed in the order of this Court. The facts apparently reveal that action for removal of the petitioner was taken in the garb of the government's guidelines dated 23.10.1987 after a period of 22 years only because the petitioner had moved this Court agitating his claim for salary and that he had to compel the authorities of the department to pay his due salary by way of contempt application before this Court. I would, therefore, come to a conclusion that such removal after 22 years in the facts of this case is a mala fide exercise of power in law if not in fact.

16. Be that as it may not only the aforementioned facts



but the developments which took place during the pendency of this writ application would also be the reason to set aside the impugned order of termination of the petitioner. This petitioner has been removed by the impugned order dated 20.09.2010 as contained in Annexure-13 to the writ application. The solitary ground for removal is that he was appointed after cut-off date of 23.10.1987. I have already held that removal itself is because of mala fide exercise of power in the garb of government's policy dated 23.10.1987, but the developments which had taken place would also be required to be noticed because subsequently during the pendency of this writ application Finance Department has come out with memo no.10710 dated 17.10.2013 by which the cut-off date has been extended to 11.12.1990. If the petitioner would have been in service then he would certainly had been entitled to be considered in terms of the latest government's policy as contained in memo dated 17.10.2013. In the case of Amulya Kumar and others (supra), the petitioners were removed when they were fighting their case before this Court for regularization of their services and according to them they should have been given equal treatment with those who were regularized pursuant to order of this Court passed in CWJC No.3163 of 1991. During the pendency of the said writ application those petitioners were terminated on the ground that they were engaged after cut-off



date i.e. 23.10.1987. When their case came to be considered by this Court vide order dated 27.03.2014 , the State came with following stand.

“Though the respondents do take a stand these seven petitioners were appointed after the earlier cut off date i.e. 23.10.1987, but learned counsel for the respondents fairly accepts that since the cut off date has been extended by the said Resolution of the Finance Department, these petitioners also come within the consideration zone. He accepts that since their services had been terminated during the pendency of this writ application, the same cannot come in the way of consideration of their case for regularization in service.”

17. Pursuant to the said stand of the State government, this Court directed the State respondents to consider the cases of those petitioners in the light of the Finance Department's letter dated 17.10.2013 completely ignoring the fact that after filing of the writ application they have been terminated and treating their status as in service in work charge establishment as it was on the date of filing of the writ application on 22.12.2005.

18. I am unable to agree with the submission of the learned counsel for the State inasmuch as I have already held and declared that very removal of the petitioner after 22 years of his continuous service in the work charge establishment that too when he was adjusted there pursuant to the observations made in order of this



Court in CWJC No.1312 of 1981 is a result of mala fide exercise of power in law if not in fact. Further I do not find any reason to distinguish this case because in the case of Amulya Kumar and others (supra) the petitioners were ultimately removed only on the ground that they were engaged after cut-off date i.e. 23.10.1987 and then only because during the pendency of the writ application the government's policy had changed and cut-off date was extended to 11.12.1990 the State took a view that the petitioners in the said case shall be entitled to be considered in the light of the government's resolution dated 17.10.2013.

19. I am of the considered opinion that the case of the present petitioner is standing on better footing because here the petitioner was engaged in the work charge establishment against vacant sanctioned post by the competent authority and the decision of the competent authority to adjust the petitioner was pursuant to the order and observations of this Court in CWJC No.1312 of 1981. The order of removal after 22 years in the garb of government's policy of 1987 was a result of mala fide exercise of power only because the petitioner was agitating the issue of non-payment of salary. As has been held hereinabove if the petitioner's removal is a result of mala fide exercise of power in the garb of government's decision dated 23.10.1987 he would also be entitled to be considered in terms of the



Government's decision dated 17.10.2013 because he would fall within the extended cut-off date i.e. 11.12.1990 apart from the fact that his appointment was pursuant to the order and observations of this Court.

20. In the aforesaid facts and circumstances, the impugned order of termination, as contained in Annexures- 12 and 13 to the writ application, is quashed in so far as they relate to this petitioner. Petitioner is reinstated in the same position where he was on the date of removal. The respondents are directed to consider the case of the petitioner in the light of the Finance Department Resolution No.10710 dated 17.10.2013 ignoring the fact that he was terminated and treating his status as in service in work charge establishment when the government's resolution dated 17.12.2013 came into existence.

21. Since I have already held that removal of the petitioner is a result of mala fide exercise of power in law by the authorities of the State, they would be liable to consider the claim of the petitioner for consequential benefits. The petitioner is therefore granted liberty to make a representation to the authority concerned for consequential benefits and the competent authority shall consider the same keeping in mind the judicial pronouncements on the subject and shall decide the same in accordance with law after giving a reasonable opportunity of hearing to the petitioner on the date fixed. The claim of



the petitioner as regards the discrepancies in the calculation of salary paid to the petitioner earlier shall also be considered by the competent authority within a period of three months from the date of receipt/production of a copy of this order.

22. The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.01.2018
Transmission Date	N/A

