

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15282 of 2010

Shivjee Kumar Sinha S/O Late Sukhdeo Sahai R/O Vill Chiraiyatand Old High School Lane, P.O., G.P.O., P.S.Kankarbagh, Distt-Patna At Present Technecian, Aditya Solar Shop , Maurya Tower, Maurya Loke, Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Through Ex-Offico , Chairman, Berda Cum Secretary, Department Of Energy Sinchai Bhawan, Patna
2. The Joint Secretary, Department Of Energy Sinchai Bhawan, Patna
3. The Director, Bihar Renewal Energy Development Agency Sone Bhawan, 3rd Floor, Birchand Patel Marg, Patna-1
4. The Special Secretary Cum Director, Energy Department Breda Sone Bhawan 3rd Floor, Birchand Patel Path, Patna-1
5. The Principal Secretary Cum Chairman, Breda Sinchai Bhawan, Ist Floor, Patna-15
6. The Chief Secretary Department Of Personnel And Administrative Reforms Government Of Bihar, Old Secretariat, Patna
7. The Principal Secretary, Finance Department Patna Secretariate, Patna
8. The Bihar Renewable Energy Development Agency Sone Bhawan, R.Block, Patna, Through Its Director
9. Mahendra Sahani S/O Sri Uchit Sahani R/O Majhar, P.O.Sirha, P.S.Pakridayal, Distt-East Champaran(Motihari), Steno Breda,Patna
10. Binay Kumar S/O Ramdeo Mahto R/O Vill Pahleja, P.S.Sonepur, Distt-Chapra, Driver, Breda, Patna
11. Birendra Kumar S/O Late Bahadur Singh R/O Vill Sabdalpur, P.O.Sahabpur Kamal, P.S.Sahabpur Kamal, Distt-Begusarai, Driver, Breda, Patna
12. Nanhak Sharma S/O Sri Brishwanath Sharma R/O Gulab Chapra, P.O.Matukpur, P.S. Barhara, Distt-Bhojpur, Technician, Breda, Patna
13. Mahendra Prasad Sinha S/O Late Manawhal Prasad Sinha R/O Vill Sirojepur, P.O.Gajraganj, P.O.Udwant Nagar, Distt-Bhojpur, Technecian, Air Pump, Breda, Patna
14. Sheochan Singh S/O Sri Kedar Nath Singh R/O Vill & P.O.Usaw, P.S.Dildar Nagar, Distt-Gazipur, U.P.Extension Officer, Breda, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Madhusudan Kumar Advocate
For the BREDA	:	Mr. Prasoon Sinha Advocate
For the Respondents	:	Mr. Sanjay Prasad AC to A.A.G. - 4

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 05-12-2018

Heard Mr. Madhusudan Kumar, learned counsel for



the petitioner; learned advocate for the BREDA; and Mr. Sanjay Prasad, AC to A.A.G.-4 for the other respondents.

The petitioner has approached this Court for a direction to Respondent Nos. 1 and 3 for regularizing his services in BREDA as he has been discharging his duties on the post of Bio-gas Technician uninterruptedly for several decades.

It may be noted that the petitioner had earlier approached this Court vide C.W.J.C. No. 4434 of 1998 for regularization of his services. The aforesaid writ petition was disposed off on 10.02.1999 with an observation that whenever any advertisement would be published for regular appointment by the department, the case of the petitioner would be considered in accordance with law and after giving relaxation of age to him.

Learned counsel for the petitioner has submitted that despite this, no advertisement has been published for regular appointment; but Respondents No. 9, 10, 11 and 12 have been appointed on regular posts after they came before this Court and similar observation was made in their favour.



In response to the aforesaid submission made on behalf of the petitioner, it has been stated on behalf of the respondents that the petitioner was appointed on daily-wage basis by the Director of BREDA under Photo-voltaic Scheme for installation as well as maintenance of different equipments. Prior to the aforesaid engagement, the petitioner worked on daily-wage basis as a Solar Technician on the basis on an order issued under the signature of the Director of BREDA.

On the contrary, Respondents No. 9 and 10 had earlier preferred C.W.J.C. No. 13041 of 2004, whereas Respondent No. 11 had preferred writ petition, bearing C.W.J.C. No. 13361 of 2004, for similar relief of regularization of their services. In their cases, since BREDA had recommended to the State Energy Department for their absorption in government service, their cases were referred to the Chief Secretary by this Court to resolve the dispute. Accordingly, their cases were considered and they were absorbed in the government service.

Likewise, Respondents No. 12, 13 and 14, who



were also working in BREDA, were absorbed in government service but their cases were different. They were deputed in BREDA in the light of the recommendations made by the Department of Public Enterprises Bureau. The aforesaid respondents, namely, Respondents No. 12, 13 and 14 were neither appointed on daily-wage basis nor had their services been regularized, but they had joined BREDA on deputation and they are continuing their service after their absorption in BREDA.

Thus, it has been submitted on behalf of the respondents that the petitioner being a daily-wager does have any right or claim for his absorption, especially in the light of the judgement passed in ***State of Karnataka Vs. Uma Deiv, reported in (2006) 4 SCC 1***. It has further been submitted that the appointment of Respondent Nos. 9, 10 and 11 are in the nature of litigious appointment, which cannot act as precedent.

After having heard the learned counsel for the parties and perusing the records, it appears that the petitioner has been working with the BREDA for a very long



time. In fact, the government in its wisdom has also sought for an answer from the Project Director of BREDA regarding the action taken with respect to erring employees because of whom there has been some anomalies in the matters of appointment.

It is also not doubted that the petitioner that petitioner has been working with the respondent organization since 1989 and he is almost on the verge of retirement.

This Court had, way back in the year 1999, directed that in case there is any advertisement published for regular appointment of Technicians, the petitioner shall be given age relaxation and weightage of his candidature because of his having worked with the organization for the last several years. The direction has fallen on deaf ears and no steps have been taken by the respondents for advertising posts for the regular appointment of Lab Technicians / Technicians.

However, considering the fact that the initial appointment of the petitioner was not pursuant to any advertisement or by a regular process, no direction also can



be issued to the department for issuing advertisement for filling up the posts of Lab Technicians / Technicians, as for that, the department concerned will have to look into the vacancy, the requirement and only thereafter to proceed further in that regard.

However, taking into account that the BREDA has been functioning with the help of the likes of the petitioner, it is expected that the department, which is an agency of the State would behave like a model employer and would take all steps for creating permanent posts in the department so that the work of renewable energy gets an impetus and in case such a process is undertaken after issuance of advertisement, needless to state that the petitioner shall be given all age relaxation and weightage for his appointment on such advertised post.

With the aforesaid observation / direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

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