

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.626 of 2016

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Prabhu Prasad, Son of Sri Ganesh Mahto, resident of village - Roopdih, P.O. Barbatsena, P.S. Bettiah Muffasil, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Superintending Engineer, Tirhut Nahar Division No. 1, Bettiah, West Champaran.
3. The Executive Engineer, Tirhut Nahar Sub Division, Banchhihuli, West Champaran.
4. The Junior Engineer, Sub-Division office, Tirhut Nahar Sub-Division, Banchhihuli, West Champaran.
5. Chief Engineer, Water Resource Department, Balmikinagar Sichai Srijan, East Champaran, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Verma, Adv. Mr. Ashok Kumar Gupta, Adv. Mr. Pankaj Kumar Sinha, Adv.
For the Respondent/s	:	Mr. Vivek Prasad, GP-7, Mr. Jitesh Singh, A.C. to GP-7, Mr. Mitesh Singh, A.C. to GP-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 09-07-2018

The writ petition is filed seeking a direction to the respondent authorities to make payment of the unpaid wages of the petitioner for the period June, 2009 to May, 2010 having worked under the Junior Engineer, Sub-Divisional Office, Tirhut Nahar Sub-Division, Banchhihuli in the district of West Champaran.

It is not in dispute that the petitioner is a seasonal employee having been engaged by the respondents on daily wages. While, it is the grievance of the petitioner that he has worked for the period June, 2009 to May, 2010 but has not been paid a single farthing, the



stand is contested by the respondents.

Initially a counter affidavit was filed by the Executive Engineer, Tirhut Canal Division No.1, Bettiah, in which it was stated that the petitioner was engaged from time to time on seasonal basis as and when he was required. It was further stated in reference to the muster roll that whatsoever duties the petitioner had discharged, he had been paid. The records transpire that even on earlier occasion, the petitioner has approached this Court in CWJC No.12399 of 2010 and which was disposed of vide judgment and order dated 27.07.2012 with an observation that if any work has been done by the petitioner, the authority should make payment thereof. Not being satisfied with the compliance that the petitioner came before this Court in contempt bearing MJC No.3374 of 2013 and a stand was taken by the Executive Engineer before this Court that whatever the admitted dues existed, had been paid to the petitioner. However, taking note of the contest the contempt petition was disposed of vide order at Annexure-4/A to the writ petition with liberty to the petitioner to raise his claim. The claim raised at Annexure-5 has not been disposed of and hence this writ petition.

As I have observed above, a counter affidavit was filed by the Executive Engineer reiterating the stand as taken before the



Contempt Court.

Mr. Anil Kumar Verma, learned counsel appearing for the petitioner while relying upon an attendance register, the extract of which is placed as Annexure-2 has submitted that the attendance register which is duly endorsed by the Section Officer is a confirmation of the days on which the petitioner has discharged his duties with the respondents and which extend from June, 2009 until May, 2010. He has next referred to the copy of the muster roll enclosed in the counter affidavit of the Executive Engineer at Annexure 'A' to submit that the signature against the name of the petitioner is forged since the petitioner neither puts his initial nor has received any amount for the days so mentioned at Annexure-A. According to Mr. Verma, while the other seasonal employees have given their full signature the very fact that a short initial is mentioned against his name, would show that the payment has been received by someone else other than the petitioner. In support learned counsel has again taken this Court to the attendance register and other documents/applications filed by the petitioner to canvass that the petitioner never puts his initial rather has been conscious to put his full name as his signature. Mr. Verma thus argues that the signature present against the name of the petitioner does not belong to the petitioner rather the amount admissible to him had been



received by some other person.

It is taking note of the arguments advanced that this Court while allowing the Chief Engineer to be added him as a party respondent, directed him to examine the matter and to file counter affidavit. A counter affidavit is though filed by the Chief Engineer but it is reiterating the same stand and Mr. Vivek Prasad, learned Government Pleader No.7 while placing reliance thereon, has submitted that the matter has been examined threadbare and nothing is found due against the petitioner rather this petitioner was disengaged in the year 2010 and it is to seek re-engagement that he has been pursuing the legal remedy.

It is also the argument of Mr. Prasad that the petitioner does not maintain a single signature rather he has been putting different initials on different occasions and thus he can not hide behind the short signature nor raise any grievance thereon.

It is contesting the arguments of Mr. Prasad, learned Government Pleader No.7 that Mr. Verma, learned counsel appearing for the petitioner has invited the attention of this Court to the certificate issued by the Executive Engineer and the Estimating Officer of the Tirhut Canal Division No.1, Bettiah, a copy of which is placed at Annexure-7 to the rejoinder to the counter affidavit to submit that even while certifying on 30.06.2010, the Executive



Engineer as well as the Estimating Officer have mentioned that the petitioner has been working since 15.06.2004 till date. He next refers to the representation placed on record through rejoinder to the supplementary counter affidavit filed on behalf of the Chief Engineer to submit that the petitioner has been representing before the authorities right since 2010 for his dues but getting no positive response that earlier he came before this Court in 2010 through CWJC No.12399 of 2010 and on not getting the relief from the respondents that the petitioner is again before this Court through the present writ petition.

I have heard learned counsel for the parties and perused the record.

The petitioner while complaining of non-payment of his dues for the period June, 2009 to May, 2010 has primarily raised two issues namely:

- (a) The payment shown to have been received by the petitioner through the muster roll for the period July, 2009 to October, 2009 enclosed with the counter affidavit of the Executive Engineer and supplementary counter affidavit filed on behalf of the Chief Engineer do not reflect the correct position because the short initial present against the name of the petitioner is forged. According to the petitioner, he has



neither signed on the muster roll nor has received any payment therefore.

- (b) Though the certificate of the Executive Engineer present at Annexure 7 to the rejoinder to the counter affidavit confirms that the petitioner has worked from 15.06.2004 to 30.06.2010 i.e. from October, 2009 until May, 2010 yet no payment has been made and on grievances raised the authorities have rejected the claim on grounds that the petitioner did not work on the project during the said period.

In so far as the issue regarding the payment made to the petitioner for the period July, 2009 to October, 2009 is concerned, it is the specific case of the petitioner that he never puts his short initials rather always puts his full signature in every document submitted to the respondents. Since such statement of the petitioner was contested by Mr. Prasad to submit that the petitioner has been putting his signature differently on different occasions, that this Court directed Mr. Prasad to substantiate his submission with the aid of documents but he could show none to support the contentions.

The pleadings on record at Annexures 1, 1/A, 2, 5, 6, 11, enclosure to Annexure-12, 13, 14 and 17 confirm the stand of the petitioner that never does he put his short initial rather he puts full



signature on all official communication. Even though the respondents did contest by brushing aside the submission of the petitioner that the signatures have been varying but this Court has noticed that even if, while writing the full name as a signature there may be a variance but never does the petitioner put his short initial in the official documents. Nothing has been produced by the State-respondents to contest the stand of the petitioner and which would confirm that payment shown to have been made to the petitioner through Annexure 'A' series to the counter affidavit of the Executive Engineer as well as Annexure 'R/1' to the 2nd supplementary counter affidavit of the Chief Engineer is not an indication of the payment to the petitioner and it is the officers concerned who are answerable on the issue.

Further this Court notices that right since 18.06.2010 this petitioner has been raising the issue of non-payment of his dues as manifest from Annexure-11, which he has continued until filing of the earlier round of litigation and he continues to do so even now. It is thus not correct on the part of Mr. Vivek Prasad to contend that the claim raised is belated and it is in order to seek reinstatement that the petitioner is raising this claim.

This brings this Court to the issue of non-payment of wages for the period October, 2009 to May, 2010. Although a stand has



been taken by the Executive Engineer as well as the Chief Engineer that the attendance register is not a reliable document and although doubts have been raised by the Executive Engineer as well as the Chief Engineer on the extract of the attendance register so enclosed on grounds that no such register is maintained but the very presence of the signature of the Section Officer on the attendance register which initials are also present on the muster roll so relied upon by the respondents proves its authenticity. The respondents cannot be allowed to blow hot and cold at the same time. That the signature of the Section Officer present on the attendance register enclosed at Annexure-2 is much present in the muster roll enclosed by the Executive Engineer as well as the Chief Engineer, no issue of doubt arises.

In the aforementioned view of the matter and since the Section Officer has himself endorsed the signature of the petitioner on the attendance register, for the entire period in question i.e. June 2009 to May 2010, it not only goes to support the engagement of the petitioner rather is fortified by the certificate of the Executive Engineer dated 30.06.2010, a copy of which is enclosed at Annexure-7 to the rejoinder to the counter affidavit and bears the signature also of the Estimating Officer to confirm that the petitioner was functional at least up to May, 2010 as claimed by



him.

The discussions above are sufficient to uphold the claim of the petitioner and in case the officers concerned have defaulted or have committed an error while making the payment to which the petitioner was entitled, to somebody else, it is for the department concerned to take appropriate steps in that regard but in so far as the present petitioner is concerned, he is fully entitled to his claim for wages for the period June, 2009 to May, 2010.

Accordingly, I direct the Executive Engineer, Tirhut Canal Division No1, Bettiah to calculate the wages payable to the petitioner for the period June, 2009 to May, 2010 as found admissible and make payment of the same within a period of three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/Anjula

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-07-2018
Transmission Date	NA

