IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22118 of 2011

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Kusum Devi, Wife of Late Arbind Kumar, son of Late Balmukhi Mahton, Resident Of Village - Basnima, P.S. Harnaut, Dist- Nalanda Retrenched Peon Mechanical Up Bhag Path Nirman Bibhag Department Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Engineer In Chief Road Construction Department Bihar, Patna
3. Principal Secretary Road Construction Department, Bihar, Patna
4. Deputy Secretary Path Nirman Department Bihar, Patna
5. Under Secretary Path Nirman Department Govt. Of Bihar, Patna
6. Kamla Shankar Yadav Son Of Not Known Working As Peon In Chief Engineer Mechanical Department Path Nirman Bibhag, Bihar, Patna
7. Bishnu Kant Mishra Son Of Not Known Working As Peon In Chief Engineer Mechanical Department Path Nirman Bibhag, Bihar, Patna
8. Suresh Kumar Son of not known, all working as Peon in Chief Engineer Mechanical Department Path Nirman Bibhag, Bihar, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Subhash Chandra Mishra, SC-16
Mr. Madhukar Mishra, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 19-04-2019

Heard learned counsel for the parties.

In this case, the petitioner is challenging the Letter No. 5681(E) dated 21.10.2011 by which the claim of the original petitioner for reconsideration for his absorption has been rejected.

The original petitioner was working in the Path Nirman Bibhag, Bihar, Patna, in Mechanical Division since 1985 on daily wages up to 1990. The Personnel and Administrative Department vide Memo No. 639 dated 10.3.2006 decided to regularize the

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daily wage worker who were working prior to 11.12.1990 and who have been working since 1.8.1985 having good record of service. Accordingly, they were asked to file an application, in the event of failure to file the application, their absorption will not be considered. The Deputy Secretary, Government of Road and Construction Department vide Memo No. 349 dated 20.10.2006 prepared the panel of 13 Daily Wage Workers including the original petitioner who was appointed as peon. Looking to the service career, the Deputy Secretary, Road Construction Department, Government of Bihar vide Memo No. 379 dated 27.11.2006 resolved to absorb him in service, accordingly, deputed all 13 persons in different departments of the Government of Bihar. Accordingly, the original petitioner was allotted Housing Department whereafter a show-cause was issued to the petitioner vide Memo No. 4367(E) dated 7.9.2007 having mentioned that he was wrongly absorbed on account of preparation of wrong seniority list, and, as such, were intending to reconsider the issue of absorption of 13 daily wages employee, as the seniority list has not been prepared as per guideline, asked to file show-cause, whereafter, the petitioner filed his show-cause dated 12.9.2007 submitted explanation that he was working in the Road Construction Department as per policy decision of the

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Government, to absorb the daily wager in the same Department where he was working. He has further said that he was working in the Mechanical Wing of the Road Construction Department since 1.8.1985, Class-4 post is available there and, according to the seniority, his position is at serial no.7 in the group of daily wage employee and there is no justification to take decision against the petitioner for termination of the services but, the Road Construction Department, Government of Bihar vide Memo No. 4963(E) dated 24.10.2007 having held that the seniority list is to be prepared on the basis of age as well as the recruitment would be made following the reservation policy. Accordingly, he is below in the merit list and his service has been terminated. Against that, the petitioner challenged the order in C.W.J.C. No. 2834 of 2009 which was disposed of on 11.7.2011. The Court has considered the plea of petitioner, having held that as per the policy decision of the State Government, the seniority list has been prepared, having found no fault in the action of fixation of seniority but, the plea was taken by the original petitioner that on account of death of one Sheo Nath Ram and on superannuation of Raj Kumar Ram and Raj Banshi Gope, three vacancies has fallen vacant. Inasmuch as, a further plea has been taken that the junior to the petitioner has approached this Court in C.W.J.C. No. 4829 of 2001 which was

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disposed of on 20.7.2005 has been retained in service and, on the contrary, the petitioner has been ousted but, looking to this submission of creation of three vacancies, the matter was remanded back for consideration and, accordingly, the representation of the original petitioner has been rejected vide Memo No. 5681 dated 21.10.2011, having stated that those persons have either been superannuated or died after 31.12.2005 and any vacancy that has occurred after the cut-off date will not be taken into consideration for appointment/absorption of the petitioner. As the petitioner challenged his seniority position in the earlier writ proceeding which has not been challenged anywhere, in that view of the matter, it reached to finality. Now the issue of seniority cannot be again re-opend in the subsequent proceeding as it operates as a res-judicata. If the petitioner was so aggrieved, he could have moved before the higher level but, he has not taken any step to challenge the order of the writ court.

In that view of the matter, this Court cannot reopen the issue of seniority of the original petitioner as limited issue was remanded back to consider the availability of vacancy and its resultant effect in consideration, for the purpose of appointment and absorption but, the Government has recorded that those vacancies have occurred after 31.12.2005, was not taken into

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consideration and this Court does not find any error in the decision and, as such, there is no merit in the present writ application.

If the petitioner is entitled to any financial benefit in consideration of work done by the original petitioner, she will be at liberty to approach to the authority who will consider the claim of the petitioner sympathetically and take a decision in accordance with law.

With the aforementioned observation, this writ application is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2019
Transmission Date	

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