

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14818 of 2015

1. Basant Singh son of Late Mahadeo Singh Resident of Village- Karamchat, P.S.- Bhagwanpur, District- Kaimur.
2. Mahipateshwar Ram, son of Sri Ram Naresh Ram
3. Shankar Chero, son of Sri Ghurhu Chero
4. Bigau Singh, son of Late Langtu Singh
5. Lalan Singh, son of Sri Dukhi Singh
6. Lalan Singh, son of Late Butan Singh
7. Lalan Chero, son of Kaluta Chero
8. Chandrika Singh, son of Late Tisuri Singh
9. Sri Singh, son of Jagarnath Singh
10. Sheo Murat Singh, son of Late Ramchyan Singh
11. Ramkeshwar Yadav, son of Sri Mahadev Singh Yadav
12. Shiv Prasad Singh, son of Jhankri Singh
13. Prayag Chero son of Late Tulsi Chero
14. Budhu Chero, son of Sri Jaganath Chero
15. Mangroo Singh, son of Sri Ramyadi Singh
16. Devan Singh son of Sri Ganesh Singh
17. Pragash Singh, son of Late Butan Singh
18. Most. Somari Kuer W/o Late Baburam Chero R/o- Ibrahimpur, Block-1. Rampur, Dist- Kaimur.
19. Ram Awadhesh Chero, son of Late Feku Chero
20. Gorakh Chero son of Late Banbari Chero
21. Ram Chandra Chero, son of Late Kishore Chero
22. Most. Bhagrathna Kuer W/o Late Sriniwas Chero R/o Ibrahimpur, Block-1. Rampur, Dist- Kaimur.
23. Bindo Singh, son of Late Bhagwat Singh
24. Bikram Chero, son of Late Piyari Chero
25. Deval Singh, son of Sri Subhag Singh
26. Dasrath Prasad Singh, son of Late Tui Singh
27. Devdhari Singh, son of Late Bhola Singh
28. Lala Sharma, son of Late Mangru Sharma
29. Shivpujan Singh, son of Late Sarup Singh
30. Lalan Chero, son of Sri Gudar Chero
31. Jaysukh Singh, son of Sri Ram Bachan Singh
32. Shivpujan Chero, son of Late Darbari Chero
33. Most. Basanti Kuer W/o Late Rambali Chero R/o Ibrahimpur, Block-1. Rampur, Dist- Kaimur.
34. Bindhyachal Singh, son of Late Murat Singh



35. Tej Bahadur Singh, son of Sri Ram Badan Singh
36. Jagdish Singh son of Late Bhola Singh
37. Bishwanath Singh Yadav, son of Ram Sakal Singh Yadav
38. Ram Kishun Singh, son of Sri Baldeo Singh
39. Ram Bhajan Singh, son of Late Ramchandra Singh
40. Bikrama Singh, son of Late Bigan Singh
41. Lalita Singh Yadav, son of Late Ramchandra Singh
42. Ganga Yadav, son of Late Mamadeo Singh Yadav
43. Shiv Nath Singh, son of Sri Kedar Singh
44. Shankar Singh Yadav son of Sri Manohar Singh Yadav
45. Baban Singh, son of Sri Basudeo Singh All resident of village- Karamchat, P.S.- Bhagwanpur, District- Kaimur

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna.
2. The Joint Secretary, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna
3. The Chief Engineer Civil, Water Resources Department, Dehri
4. The Chief Engineer Mechanical, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna
5. The Superintending Engineer, Durgawati Construction Circle, Bhitri Bandh, Kaimur
6. The Superintending Engineer Mechanical, Water Resources Department, Dehri
7. The Executive Engineer, Durgawati Dam Project, Bhitri Bandh, Kaimur
8. The Executive Engineer, Spilway Division, Durgawati Dam Project, Bhitri Bandh, Kaimur
9. The Executive Engineer, Durgawati Dam Project, Right Embankment, Bhitri Bandh, Kaimur
10. The Executive Engineer, Durgawati Dam Project, Left Embankment, Bhitri Bandh, Kaimur

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Shivendra Kishore, Senior Advocate
	:	Mr. Jai Kishore Poddar
	:	Mr. Saroj Kumar
For the State	:	Ms. Archana Meenakshi (GP 6)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



ORAL JUDGMENT
Date : 31-08-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard Mr. Shivendra Kishore, learned Senior Counsel with Mr. Jai Krishna Poddar and Mr. Suraj Kumar for the petitioners and Mrs. Archana Meenakshee, learned G.P.- 6 for the State of Bihar.

3. There are 45 petitioners in the present application. Petitioners No. 18, 22 and 33 died during the pendency of this application and have been substituted by their legal representatives for pursuing this matter.

4. The facts of the case are not at all in dispute. The Water Resources Department, Government of Bihar, had acquired huge chunk of land from several persons in and around 1979 for Durgawati Dam Project, situate in the district of Kaimur, Bihar. Consequent upon acquisition of land, many persons had become landless or lost substantial area of their land, rendering them jobless. It appears from an order of this Court dated 15.04.2005 passed by a coordinate Bench in C.W.J.C. No. 1760 of 2000 (*Basant Singh and Others vs. The State of Bihar and Others*), filed by these petitioners that the State Government of Bihar had passed a resolution containing policy relating to appointment of



persons got displaced because of acquisition of land for execution of different projects under the Water Resources Department. The resolution provided, *inter alia*, that the persons, who would be displaced for implementation of the project under the Water Resources Department, Government of Bihar, must be rehabilitated by providing an employment. It was decided that one employment shall be allowed for each of the family displaced. The Government also decided, in the said policy, that the first preference for the employment shall be given to such families, which had lost all the lands belonging to the families, then those which has lost 75 percent of its lands and thereafter to the families, which has lost 50 percent of its lands.

5. The petitioners claim that their families had lost 100 percent of their lands in the acquisition for execution of said Durgawati Dam Project. They were listed as such and were also given appointment by the Government, but on *ad hoc* basis. As services of the petitioners were being not regularized and their services were being taken on *ad hoc* basis only for several years, they approached this Court by filing the said writ application registered as C.W.J.C. No. 1760 of 2000. A coordinate Bench of this Court, in its decision dated 15.04.2005 in case of ***Basant Singh*** (supra) filed by the petitioners held as under : -



“...Be that as it may, the aforesaid representation in the policy regarding employment of displaced persons because of execution of different projects under Water Resources Department, was a representation about an employment which the government was competent to retain and accordingly, the government could only give an employment in its establishment to such displaced persons, in as much as only such employment could be retained by the government. It could not give assurance, nor could ensure retention of an adhoc employment, which is given only for doing emergent necessary work, required to be done for a temporary period.”

6. After having held as above, the Court directed the State respondents in case of **Basant Singh** (supra) to consider within 12 weeks from the date of service of a copy of the order upon respondent No. 1 of that case to convert *ad hoc*/daily wage employment of the petitioners into permanent appointment in its permanent establishment.

7. Taking exception to the decision rendered by a coordinate Bench of this Court in case of **Basant Singh** (supra), the State of Bihar preferred an appeal under the Letters Patent of this Court giving rise to L.P.A. No. 875 of 2006. The said L.P.A. No. 875 of 2006 (**State of Bihar and Others vs. Basant Singh and**



Others) came to be dismissed by a judgment and order of a Division Bench of this Court dated 22.07.2010, which has been brought on record by way of Annexure-4 to this writ application. From the Division Bench decision of this Court in case of **State of Bihar vs. Basant Singh and Others** (supra), it can be easily noticed that the State of Bihar had taken mainly two grounds to assail the order passed by the writ Court in case of **Basant Singh** (supra) : -

(i) there was difficulty in finding of post for the petitioners to convert their *ad hoc*/daily wage appointment into permanent appointment in permanent establishment; and

(ii) under the policy decision, scrutiny was required to be made and a fresh scrutiny should be permitted to be done by the authorities.

8. Having noticed the facts and circumstances and the stand taken on behalf of the State of Bihar, the Division Bench observed that the State of Bihar and its officials had not been fair and honest in implementing their policy, which was formulated to take care of immense hardship of the displaced persons, who had lost their means of livelihood. Such policy must have been formulated keeping in view the necessity for employees relating to the various projects, which have been going on since around 1980-



90 and has not been completed yet. The Court further observed that if during such long period, the posts could not be notified for such displaced persons, fault must lie with the authorities.

9. The Division Bench finally held as under : -

“.... In the special facts of the case the authorities must treat the petitioners as regular employees on account of their own policy, the hardship which the petitioners have undergone and the bleak future of the petitioners if they are continued to be treated as daily wage employees. In such circumstances, in our view, the relief granted by the writ court to the writ petitioners is just and fair relief which requires no interference. The pleas of the appellants cannot be accepted as valid when the engagement of the petitioners is continuing for such a long time as ad-hoc daily wage employees. The posts must be treated as regular posts. The petitioners must be given all the benefits as regular employees within a reasonable period such as eight weeks from today.

8. If any of the petitioners is dead then his heirs will be at liberty to claim whatever legal benefit may accrue to them on account of order of the writ court. The appeal fails and is accordingly dismissed. There shall be no order as to costs.”



10. In compliance of the decision of this Court dated 15.04.2005 in C.W.J.C. No. 1760 of 2000 and dated 22.07.2010 passed in L.P.A. No. 875 of 2006, the Chief Engineer, Water Resources Department, Government of Bihar, came out with an order dated 09.08.2012 appointing the petitioners as Peons in the pay band 4440-7440 and grade pay of Rs.1300 with admissible allowances. The only grievance, which the petitioners have in the present writ application, is that their regular appointment should not be treated from the date of issuance of the said order dated 09.08.2012. It is their case that they should have been treated to have been engaged on regular basis from the date of their initial appointment.

11. In the aforesaid background, the petitioners are seeking quashing of paragraph 4 of the said order dated 09.08.2012 issued by the Chief Engineer, which stipulates, *inter alia*, that their regular appointment shall not confer upon them any seniority in the cadre and their position shall be below the persons already appointed in the cadre. They are seeking a direction to the respondents to shift back the date of their appointment with effect from the date when they were initially appointed on *ad hoc* basis and give them benefit of continuity of service with all



consequential benefits including difference of salary after deducting the amounts already paid to them and benefits of pension and gratuity under the scheme as was applicable to the employees of the State Government prior to 2005.

12. A counter affidavit has been filed on behalf of the State of Bihar, wherein it has been stated that the petitioners have been appointed on regular basis in the light of the judgment and order passed by this Court in C.W.J.C. No. 1260 of 2000 and L.P.A. No. 875 of 2006. It is their case that there is no direction in either of the said judgments and orders that the petitioners were to be appointed with retrospective effect. It has further been stated that once the petitioners joined, pursuant to the order dated 09.08.2012, they cannot turn around and claim benefit of regular appointment from retrospective date as they cannot approbate and reprobate at the same time.

13. A rejoinder to the counter affidavit has been filed on behalf of the petitioners reiterating that admittedly the Division Bench of this Court in its order dated 22.07.2010 passed in L.P.A. No. 875 of 2006 has affirmed the order of the writ Court dated 15.04.2005 passed in C.W.J.C. No. 1760 of 2000, whereby the respondents were directed to convert *ad hoc*/daily wage employment of the petitioners into permanent employment in its



permanent establishment. It is the case of the petitioners that the direction of this Court was to convert the *ad hoc* appointment of these petitioners into permanent employment. In compliance of the said orders of this Court, the respondents were under obligation to merely convert the engagement of these petitioners into regular appointment and not to appoint them afresh.

14. A supplementary affidavit has been filed on behalf of the petitioners, wherein it has been stated that during the pendency of this application, some of the petitioners, namely, petitioners No. 2, 7, 8, 10, 11, 19, 24, 34, 39 and 40 retired on attaining the age of superannuation. It has been asserted that the petitioners have uninterruptedly discharged their duties on *ad hoc* basis from their initial date of engagement till their regular appointment against Class IV post of Peon vide order dated 09.08.2012.

15. Reliance has been placed on an order dated 09.01.2018 of this Court passed in C.W.J.C. No. 18775 of 2008 (***Ram Lal Chero and Others vs. The State of Bihar and Others***), whereby, in similar circumstance, a coordinate Bench of this Court has directed the respondents to take into consideration the past service rendered by the petitioners for the purpose of pension as well as A.C.P. benefits but not for others. It has also been stated in paragraph 17 of the supplementary affidavit filed on behalf of the



petitioners in respect of petitioner No. 26 that he was also one of the petitioners in C.W.J.C. No. 1760 of 2000, who was transferred and posted in the office of the Executive Engineer, Ganga Pump Canal Division, Chousa, Buxar, and on the basis of the recommendation made by the selection committee, Buxar, appointment of petitioner No. 26 has been confirmed vide letter No. 2010 dated 09.10.2012. It is contended that said petitioner No. 26 is also entitled to the same privileges as the persons whose names figure in the order dated 09.08.2012 issued by the Chief Engineer, Water Resources Department, Dehri.

16. Mr. Shivendra Kishore, learned Senior Counsel appearing on behalf of the petitioners, has placed reliance on a coordinate Bench decision of this Court in case of ***Bimal Kumar Roy and Others vs. The State of Bihar and Others***, reported in [2021 (2) BLJ 354] to submit that this Court, noticing uninterrupted service of the employees subsequently regularized, has directed for counting past service rendered by the petitioners of that case for the purpose of qualified pensionary service only to the extent of ten years, rest service was not to be counted for quantification of pensionary benefits. Paragraph 19 of the decision in case of ***Bimal Kumar Roy*** (supra) reads as under : -

“19. In view of the facts and circumstances mentioned above, the Court is



constrained to allow the writ petition in the light of the judgment of the Apex Court in the case Netram Sahu and Amarkant Rai (Supra) and also noting the fact that the petitioners form same homogeneous class as other persons who were appointed on daily wages before 1.8.1985 and have been granted benefit of pension, petitioners are also entitled to similar treatment. Accordingly, the past service rendered by the petitioners shall be counted for the purpose of qualified pensionary service i.e. only to the extent of 10 years and rest services shall not be counted for quantification of pensionary benefits. Since the petitioners' past service has been recognized by the respondents and only as a recognition of past service, they have been appointed on regular post, they are entitled to pensionary benefits notwithstanding coming into force new pension scheme as taking advantage of their own wrong in causing delay in regular appointment of the petitioners by the respondents, the petitioners cannot be denied the benefit of pension saying that the new pension scheme has been introduced."

17. Reliance has also been placed in case of ***State of Bihar vs. Prem Kumar Singh***, reported in 2011 (2) PLJR 956. The Division Bench in case of ***Prem Kumar Singh*** (supra) issued following direction in paragraph 12 : -



“12. In the result, this appeal is dismissed with costs quantified at Rs.1,00,000/- (Rupees One lac. only) towards harassment and cost of the proceedings to be paid to the writ petitioner within a period of four months. The State Government in the department of Water Resources is hereby directed to appoint the writ petitioner on a suitable post consistent with his qualification with effect from the date six months prior to the date on which possession of his lands were taken over with all consequential benefits. The entire arrears of salary shall carry interest @ 6% (six) from the dates the amounts including costs became due till the date of payment.”

18. Complaining against the conduct of the officials of the State, he has referred to Supreme Court's decision in case of ***Anil Kumar vs. The Union of India and Others*** reported in (2019) 5 SCC 591, to contend that it was incumbent upon the respondents to have given complete effect to its own policy decision. The decision of the State Government to grant petitioners regular employment from the date of issuance of the order dated 09.08.2012 is contrary to the final decision of the State Government, he contends. He has also relied on yet another decision of Supreme Court in case of ***N.D.Jayal and Another vs. Union of India and Others***, reported in (2004) 9 SCC 362.



19. It is evident from the facts noted above that in the earlier round of litigation initiated at the instance of these petitioners giving rise to C.W.J.C. No. 1760 of 2000, a coordinate Bench of this Court had reached a definite conclusion that the assurance of the State Government to grant benefit of employment to the displaced persons meant such employment, which could be retained by the Government. It could not give an assurance, nor could ensure retention of an *ad hoc* employment, which is given only for doing emergent necessary work, required to be done for a temporary period. The said conclusion of the coordinate Bench stood affirmed with the dismissal of the Letters Patent Appeal preferred by the State of Bihar. The writ Court had directed on 15.04.2005 to consider within 12 weeks from the date of service of copy of the order upon respondent No. 1 to convert the *ad hoc*/daily wage employment of the petitioners into permanent appointment in its permanent establishment. The respondents did not choose to implement said order of the writ Court and filed the Letters Patent Appeal much thereafter in 2006. The Division Bench dismissed the Letters Patent Appeal and thus affirmed the decision rendered by the writ Court. The Division Bench decision was rendered in 2010. The respondent Chief Engineer has issued the order nearly two years thereafter on 09.08.2012. Apparently,



for their own latches and delay caused by the respondents in issuing necessary order converting *ad hoc*/daily wage employment of the petitioners to permanent establishment, the respondents are resisting the claim of the petitioners for counting their past service for all the purposes including for the purpose of computing of period of their past service for different benefits against various heads.

20. This Court's order for converting their *ad hoc* employment to permanent Establishment was passed much before 01.09.2005 with effect from which, new pension scheme came into force. The petitioners are admittedly working for years together. Some of the petitioners attained the age of superannuation on various dates as indicated in paragraph 10 of the supplementary affidavit filed on behalf of the petitioners.

21. It would be useful to note that in case of ***N.D.Jayal*** (supra), which arose out of execution of Tehri Dam Project, the Supreme Court held that those ousted or displaced from the area for execution of the project had a right under Article 21 of the Constitution to lead decent life and earn livelihood. Rehabilitation of the oustees is logical corollary of Article 21 of the Constitution of India. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated location, the Supreme



Court observed. Referring to and relying on earlier decisions, in case of *Narmada Bachao Andolan v. Union of India*, reported in (2000) 10 SCC 664 and in case of *B.D. Sharma v. Union of India*, reported in 1992 Supp (3) SCC 93, the Supreme Court laid down in paragraph 60 in case of *N.D.Jayal* (supra) as under : -

60. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in Narmada Bachao Andolan case [(2000) 10 SCC 664] . The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in B.D. Sharma v. Union of India [1992 Supp (3) SCC 93] and this was reiterated in Narmada



[(2000) 10 SCC 664] . This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.”

22. Obviously, recognizing the fundamental right to life of the oustees under Article 21 of the Constitution, the State of Bihar had prepared a plan in the form of policy decision to employ the oustees in government service, which the officials/respondents failed to honour. Despite this Court's order, the officials declined the petitioners their rightful claim on one pretext on the other.

23. In the admitted facts and circumstances, as noted above, in my opinion, it will be equitable in the interest of justice if the respondents are directed to treat the date of appointment of these petitioners in permanent establishment with effect from 09.07.2005, the date when 12 weeks expired from passing of the order by this Court dated 15.04.2005 in C.W.J.C. No. 1760 of 2000 (supra). A right accrued to the petitioners with the passing of the said order dated 15.04.2005, whereby the respondents were commanded to consider converting of *ad hoc* employment of these petitioners into permanent establishment, denial of which was found by the Court to be arbitrary. The petitioners cannot be



blamed for the delay caused in issuance of the order by the Chief Engineer in this regard. In the Court's opinion, in no circumstance, they should be denied the notional benefit of shifting the date of their regular appointment.

24. Having held so, in the Court's opinion, the petitioners are held be entitled to pensionary benefits, in accordance with the Bihar Pension Rules, 1950 for computation of which their past service on *ad hoc* basis shall be computed, for the purpose of qualifying pensionary service to the extent of ten years.

25. This writ application is allowed to the aforesaid extent.

26. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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