

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14578 of 2017

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Anita Rani, wife of Sri Narendra Kumar Karn, resident of village + P.O. +
P.S. - Samastipur, District - Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Road Construction Department,
Bihar, Patna
2. Additional Secretary, Road Construction Department, Bihar, Patna
3. Joint Secretary, Road Construction Department, Bihar, Patna
4. Engineer-in-Chief, Road Construction Department, Bihar, Patna
5. Chief Engineer, Road Construction Department, South Bihar (Traffic),
Road Construction Department, Bihar, Patna
6. Superintending Engineer, Bhojpur Road Circle, Road Construction
Department, Arrah
7. Executive Engineer, Bhabhua Road Division, Bhabhua

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Ravi Bhardwaj, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

5 29-07-2021 The present writ application has been filed for a

direction to the respondents to re-appoint the petitioner on the

post of Peon in Bhabhua Road Division, Bhabhua along with all

consequential benefits.

2. The brief facts giving rise to the present writ
application is that petitioner was appointed earlier as Daily
Wager on the post of Peon and she started working before the
Executive Engineer, Sahabad Road Division, Road Construction
Department, Arrah w.e.f. 29.12.1993. It is further case of the
petitioner that the petitioner worked as a Daily Wager from
21.12.1993 to October, 1995 on the post of Peon. The petitioner



has further stated in the writ application that the petitioner was subsequently appointed on the post of Peon on a substantive vacant post on provisional / ad hoc basis on 9.3.2000 for a period of three months by the Superintending Engineer, Bhojpur Road Circle, Road Construction Department, Arrah vide appointment letter dated 9.3.2000 (Annexure- 2 to the writ petition). The petitioner joined on the post of Peon on 9.3.2000 itself in Bhabhua Road Division, Road Construction Department, Bhabhua. On 2.6.2000 petitioner submitted her representation before the Superintending Engineer, Bhojpur Road Circle, Road Construction Department, Arrah through proper channel and requested him to re-appoint on the vacant post of Peon on the ground that she satisfactorily discharged her duties upon which the Executive Engineer, Bhabhua Road Division, Road Construction Department, Bhabhua on 2.6.2000 recommended for appointment of the petitioner on the vacant post of Peon. The contention of the petitioner is that in spite of recommendation of the Executive Engineer, Bhabhua Road Division no order was passed by the Superintending Engineer, Bhojpur Road Circle because at that time the then Superintending Engineer, Bhojpur Road Circle was under suspension and the post of Superintending Engineer, Bhojpur



Road Circle was vacant for about six months. Accordingly, neither the service of the petitioner was extended nor any order was passed for re-appointment of the petitioner after expiry of period of three months. The petitioner thereafter filed representation before the Hon'ble Chief Minister, Government of Bihar, Patna on 14.11.2003 with a request for a direction that the Superintending Engineer be directed to extend / re-appoint the petitioner on the post of Peon. Upon the said representation Additional Secretary, C.M. Secretariat, Bihar requested to Chief Engineer, Road Construction Department to take appropriate action. The petitioner thereafter submitted various representations before different authorities in the year 2006, 2007, 2012, 2016, 2017 etc.

3. A counter affidavit has been filed by the respondent – State stating therein that the claim of re-appointment of the petitioner is not sustainable in law and facts inasmuch as the petitioner has raised elusive claims with misleading facts. The counter affidavit further states that the petitioner was appointed only for three months purely on provisional / ad hoc / tenure basis hence after expiry of three months period the appointment of the petitioner had come to an end by efflux of time. The respondent – State further contended that the petitioner had



worked as Daily Wager for a short period i.e. 24 days in the month of February, 1995 and in the month of May, 1995 for which she was paid Rs. 576/- and Rs. 701/- respectively and the same would be evident from perusal of service record of the petitioner which has been enclosed as Annexure- 'A' to the counter affidavit. The counter affidavit thus states that the petitioner had not even worked for 240 days as Daily Wager continuously. Annexure- 'C' to the counter affidavit is the letter issued by Executive Engineer, Bhabhua Road Division, Bhabhua addressed to Deputy Secretary, Road Construction Department, Government of Bihar, Patna dated 5.10.2012 stating therein that petitioner was appointed on ad hoc basis for three months and after expiry of period of three months the appointment of the petitioner came to end by efflux of time.

4. Further contention of the respondent – State is that writ petitioner has not worked for 240 days continuously at any point of time hence the petitioner is not covered by the ambit of Resolution No. 489 dated 10.5.2005 issued by Personnel Department, Govt. of Bihar which clearly indicates that such Daily Worker who has completed 240 days continuous service as Daily Wage Worker before the cut off date i.e. 11.12.1990 shall be considered for his / her service. The petitioner worked



after the cut off date fixed by the Government inasmuch as she has worked for a short period in the year 1994-95.

5. The respondent State also stated in the counter affidavit that in response to letter no. 5243 dated 16.6.2017 the Superintending Engineer, R.C.D. Circle Arrah in his letter no. 984 dated 29.12.2017 had informed the Joint Secretary, Road Construction Department, Government of Bihar (Annexure -D to the counter affidavit) about the nature of appointment of the petitioner stating therein that petitioner had worked on ad hoc basis provisionally only for three months without following the procedure prescribed for appointment by the Department and further the admitted position is that the petitioner has not been granted any extension after expiry of three months period.

6. A rejoinder to the counter affidavit has been filed by the petitioner by which the petitioner has reiterated the fact that petitioner had earlier worked in the year 1993- 1995 as Daily Wager and thereafter in the year 2000 she was appointed for three months on the vacant post of Peon on provisional basis based upon her satisfactory service as Daily Wager.

7. Learned counsel for the petitioner argued that denial of re-appointment to the petitioner despite positive recommendation of the Executive Engineer, Bhabhua Road



Division, Road Construction Department, Bhabhua is arbitrary, unreasonable, unfair and illegal. Learned counsel further submits that the concerned authorities did not take into consideration the recommendation made by the Executive Engineer, Bhabhua Road Division as well as several requests made by the Joint Secretary and Additional Secretary of the concerned Department which shows the unfair treatment meted out to the petitioner. The petitioner has been denied her legitimate right to be re-appointed on the vacant post of Peon. Learned counsel next argued that just before expiry of three months period on 2.6.2000 the Executive Engineer, Bhabhua Road Division had recommended for appointment of the petitioner on the vacant post of Peon but due to non availability of the Superintending Engineer, Bhojpur Road Circle neither the service of the petitioner was extended nor any order was passed for reappointment of the petitioner as such the submission is that it is settled principle of law that for the fault of the respondents the petitioner cannot be made to suffer.

8. Learned counsel appearing for respondent / State submits that petitioner was appointed as a Daily Wager in December, 1993 and for a very short period the petitioner worked as Daily Wager which came to end in October, 1995 and



thereafter after five years the petitioner was appointed by the Superintending Engineer on 9.3.2000 on tenure / ad hoc basis for three months only. The appointment of the petitioner was liable to come to end after completion of three months period and in absence of any extension given to the petitioner the appointment of petitioner came to an end on expiry of three months period in June, 2000. Learned counsel further submits that it is admitted position that the petitioner was not granted any extension after expiry of three months and that the petitioner was appointed without any advertisement and the procedure prescribed for appointment.

9. Learned counsel further contended that the case of the petitioner is also not covered under Resolution No. 489 dated 10.5.2005 issued by the Personnel Department, Government of Bihar inasmuch the petitioner has not worked for 240 days continuously at any point of time further she was appointed on Daily Wage for a short period before the cut off date i.e. 11.12.1990.

10. I have heard learned counsel for the parties and have carefully perused the materials available on record. It is admitted position that petitioner was appointed on ad hoc basis for a period of three months only which has not been extended



further by the competent authority. It is neither pleaded nor there is any material to show that appointment of the petitioner was made after issuing public advertisement or the Selection Body authorized under relevant Rules / Circulars for appointment has selected the petitioner after giving opportunity to all the candidates eligible for the post by calling name from the Employment Exchange.

11. Article 16 of the Constitution of India relating to fundamental rights stipulates that in matters relating to appointment equal opportunity shall be given to citizens relating to employment or appointment in any Office under the State.

12. It is a trite law that appointment to any post under the State can only be made after a proper advertisement and by inviting applications from eligible candidates by a duly constituted Selection Committee under the Rules or Circular issued in this regard. In State of Orissa & Anr. vs Mamata Mohanty reported in (2011) 3 SCC 436 the Hon'ble Supreme Court in paragraph no.- 36 has held as under:-

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad



*hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. **For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to***



compete on merit.

13. Further in the judgment reported in 1996 AIR 1565 State of Himachal Pradesh Vs. Suresh Kumar Verma Hon'ble Apex Court has held that “ **The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition.**”

14. In view of the discussions held hereinabove and considering the facts and submissions made before this Court by the parties, this Court comes to the conclusion that ad hoc appointment of the petitioner for three months was not made in a manner which could have remotely been said to be in compliance of Article 14 and 16 of the Constitution of India. The petitioner failed to produce any material before this Court that the relevant Rules/Circulars were followed at the time of ad hoc / tenure appointment of the petitioner for a period of three months on 9.3.2000. Further the petitioner was appointed on ad hoc / tenure basis initially for a period of three months and same was not extended after expiry of three months period. It is thus



clear that by efflux of time the appointment of the petitioner came to end after three months and no vested legal right for re-appointment has been created in favour of the petitioner by virtue of recommendation made on 02.06.2000 by the Executive Engineer, Bhabhua Road Division, Road Construction Department, Bhabhua.

15. Accordingly, I do not find any merit in the writ application and the same is dismissed. However, there shall be no order as to cost.

(Anil Kumar Sinha, J)

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