

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 191 of 2020

=====

Ramesh Chaudhary son of Late Gangadhar Chaudhary resident of Village-
Basauna, Post Office- Basauna, Police Station- Bangaon, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary to Government in the Public Health Engineering Department, Bisheshwaraiya Bhavan, Bailey Road, Patna.
2. The Joint Secretary to Government, Public Health Engineering Department, Bisheshwaraiya Bhavan, Bailey Road, Patna.
3. The Chief Engineer (Civil), Public Health Engineering Department, Bisheshwaraiya Bhavan, Bailey Road, Patna.
4. The Superintending Engineer, Public Health Engineering Circle, Saharsa.
5. The Executive Engineer, Public Health Engineering Division, Saharsa.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Lalan Kumar Singh, Advocate
For the Respondent/s : Mr Bijoy Kumar Sinha, AC to AAG V

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 30-06-2022

Heard learned counsel for the petitioner and the respondents.

2 This writ petition has been filed for quashing of order dated 12.02.2019 bearing Memo No 218 passed by the Secretary, Public Health & Engineering Department (for brevity, *PHED*) rejecting the petitioner's claim for absorption in the regular establishment. The petitioner has also sought issuance of directions upon respondents to consider and absorb him in service



on a Class IV post from a date when others, similarly situated/junior persons to the petitioner, have been absorbed.

3 The admitted facts, which emerge from the pleadings are that the petitioner has worked as a daily wages employee in the PHED in Saharsa Circle in between 1987 to 1989 and from 1989 to 1991. Petitioner was disengaged on 10.02.1991. In light of certain orders passed in SLP (C) No 4625 of 1993, the petitioner was again taken in the daily wages establishment. Subsequently, in compliance of order dated 14.01.1997 passed by the Hon'ble Apex Court in SLP No 199 of 1993 and SLP No 4625 of 1993, services of the petitioner have been terminated under Office Order No 5, contained in Memo No 52 dated 17.03.1998 issued under the signature of the Superintending Engineer, PHED, Saharsa Circle, holding the engagements of the petitioner to be illegal. The same was assailed by the petitioner in CWJC No 8954 of 2000 which was dismissed on 14.09.2001.

4 The petitioner preferred LPA No 1368 of 2001 which was allowed and direction issued to consider the application of the petitioner for his reinstatement in light of law laid down by the Division Bench in the case of *Ram Tapeswar Sah & Others -Versus- State of Bihar & Others*, reported in 2006 (3) PLJR 376. The State authorities were directed to pass an order within a period



of one month from the date of receipt of representation of the petitioner. The State of Bihar, in the PHED, brought out an order dated 10.07.2013 (Annexure 11) on the petitioner's representation holding that the petitioner could not be reinstated/reappointed.

5 The order dated 10.07.2013 was issued during pendency of the contempt proceedings arising out of LPA No 1368 of 2001. The contempt proceedings (*MJC No 6702 of 2012*), was, thus, disposed of on 03.09.2013, reserving the right of the petitioner against the order dated 10.07.2013 passed by the Principal Secretary.

6 The petitioner then assailed the order dated 10.07.2013 in CWJC No 233 of 2015. In these proceedings, petitioner placed reliance on decision of a Division Bench of this Court in the case of *Ashok Kumar Sharma & Others -Versus- State of Bihar & Others*, in the case of *Jai Kishun Ram & Others -Versus- State of Bihar & Others*, reported in *2016 (1) PLJR 232* and *2016 (1) PLJR 152* respectively.

7 This Court, vide order dated 05.03.2018 directed the respondents to consider the petitioner's claim based on parity with other similarly situated for being absorbed/regularized. When the Writ Court's order was not being complied with by the authorities, petitioner filed contempt application bearing MJC No 2105 of



2018. The same was disposed of by order dated 22.07.2019 in view of the fact that authorities had passed the order dated 12.02.2019 rejecting the petitioner's claim. The contempt petition was, thus, disposed of with liberty to the petitioner to avail remedy in appropriate jurisdiction. This is the admitted background leading to filing of the instant writ petition wherein the order dated 12.02.2019 has been assailed.

8 The order dated 12.02.2019 is a well considered order assigning reasons. The Secretary, in the said order, has taken note of the fact that daily wages engagement of the petitioner had been terminated under order dated 17.03.1998.

9 He has also taken note of the fact that the petitioners, in the case of *Ashok Kumar Sharma & Others (supra)* had been regularized in the year, 2006 and, thereafter, had been removed in 2019 after show cause in light of Resolution No 639 dated 16.03.2006 issued by the Personnel and Administrative Reforms Department. On this score, the petitioner's case was found to be on different footing as, admittedly, he has never been taken in the regular establishment. In fact, the petitioners' daily wages engagement was found to be illegal and terminated under order dated 17.03.1998 by the PHED, Saharsa Circle. The petitioner's claim, therefore, was not found to be at par with the petitioners or



subsequent beneficiaries of decision of the Division Bench of this Court in LPA No 1690 of 2013 (*Ashok Kumar Sharma's case*).

10 The Secretary has also considered that 2277 posts were created by the Department, duly approved by the Cabinet. The number of posts in PHED, Saharsa Circle has been taken note of by the Secretary, vis-a-vis the number of persons taken in the regular establishment based on a seniority list having regard to the date of birth. All those, who have been absorbed as a result of this exercise, were senior to the instant petitioner. Candidates of general category having date of birth up to the year, 1960 were absorbed whereas the petitioner's date of birth is 05.07.1962. Accordingly, the Secretary has come to the conclusion that even if the petitioner's claim for regularization/absorption was to be considered then same could not be done for want of vacancy.

11 The petitioner's counsel has submitted that several persons, similarly situated as the petitioner, have been subsequently regularized or absorbed in the regular establishment. He has handed over copies of judgments/orders passed in CWJC No 16886 of 2011 and CWJC No 10437 of 2006.

12 Judgment in CWJC No 10437 of 2006 in the case of *Siyaram Singh & Others -Versus- State of Bihar* does not help the petitioner's case for absorption due to a basic difference in the



claim of the petitioners in that case vis-a-vis the petitioner. In the case of *Siya Ram Singh (supra)*, the petitioners have been terminated much later than the petitioner, i.e., on 13.04.2002 and the grounds on which they were terminated were that their earlier engagement was “irregular”; and not “illegal”, as in the instant case. It is the same position. In so far as the order passed in *CWJC No 16866 of 2011* in the case of *Md Ahmad & Others -Versus – State of Bihar & Others*, this Court would observe that the dispute was entirely different. In the case of *Md Ahmad (supra)*, the petitioners therein had been denied regularization for the following reasons:

“The rejection as per submissions of counsel for the State are on two grounds. Firstly, petitioners did not work 240 days as a daily wages employees in each year for five years prior to 11.12.1990 and secondly, claim of the petitioners for determining seniority for consideration of their claim was to be considered on the basis of their date of birth. Accordingly, the petitioners’ claim were much below in priority and therefore they were not considered.”

13 That is not the case in the instant proceedings. The petitioner, therefore, cannot claim any parity with the petitioners in the case of *Md Ahmad & Others (supra)*.

14 This Court would re-emphasize the fact that in case of the petitioners of *Siyaram Singh & Others (supra)* and *Md Ahmad & Others (supra)*, there was no order declaring their daily



wages engagement to be “illegal”. In the instant case, petitioner’s services were declared to be illegal which is an admitted fact. The declaration to this effect in order dated 17.03.1998 issued by the PHED, Saharsa Circle, has never been interfered with and stands till today.

15 In view of the consideration above, this Court would find that the order of the Secretary dated 12.02.2019, impugned in the instant writ proceedings, does not suffer from any infirmity. The same is a well considered order, assigning reasons; which are sustainable based on the facts of the instant case.

16 This writ petition is, thus, devoid of merit and is, accordingly, dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2022
Transmission Date	NA

