

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19084 of 2011

1. Jai Prakash Prasad, son of Late Ram Awatar Roy, Resident of village- Sakari Saraiya, Police Station- Kurhani, District- Muzaffarpur.
2. Lata Devi (female), wife of Late Baidya Nath Baitha, Resident of Chakkar Maidan, Police Station- Muzaffarpur Town, District- Muzaffarpur.

... .. Petitioners

Versus

1. The State Of Bihar.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Road Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, Road Construction Department, National High Way Circle, Muzaffarpur.
6. The Executive Engineer, Road Construction Department, National High Way Division, Muzaffarpur.
7. The Assistant Engineer, Road Construction Department, National High Way Sub-section, Muzaffarpur.
8. The Junior Engineer, Road Construction Department, National High Way Sub-Section, Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 20-03-2023

I.A. No 1 of 2023

This application has been filed seeking substitution of the legal heirs of the petitioner no. 2 who died on 23.11.2020 during pendency of the present writ application.

Learned counsel for the State has no objection to the same.

Let Lata Devi, wife of Late Baidya Nath Baitha @ Vadh Nath Baitha be substituted in place of the petitioner no. 2.



The name of deceased petitioner no. 2 be expunged from the records.

This application is allowed.

Heard learned counsel for the petitioners and Mr. Ajay Kumar, learned AC to GP-4 for the State.

The two petitioners in this writ application prayed for issuance of a writ in the nature of a writ of Certiorari to quash and cancel the order dated 10.09.2010 passed by respondent no. 4 whereby and whereunder the respondent no. 4 had directed all the Superintending Engineers and Executive Engineer to terminate the services of those work charge employees, who were working in the work charge establishment after 23.10.1987. The petitioners also prayed for quashing of letter dated 21.09.2010 passed by respondent no. 8 whereby the services of the petitioners have been terminated with effect from the date of issuance of the letter pursuant to the order contained in Memo No. 15373(S) dated 10.09.2010.

As may be noticed, the original petitioner no. 2 has died during pendency of the writ application, therefore, the further prayer made in the writ application seeking reinstatement of the petitioners in service in the work charge establishment and thereafter to regularize his service is no



longer available in respect of original petitioner no. 2.

Learned counsel for the petitioners, however, submits that if the petitioner succeeds, the legal heir of deceased petitioner no. 2 may perhaps be entitled to some consequential/monetary benefits, therefore, the writ application may be considered in respect of the petitioner no. 2 at least to the extent that the cause of action still survives for his substituted legal heir.

It is the case of the petitioners that the petitioner no. 1 was engaged as Roller Khalasi on daily wages basis by the Executive Engineer (respondent no. 6) in the year 1980 whereas the petitioner no. 2 was engaged as a Washer man (Dhobi) on daily basis by the Executive Engineer (respondent no. 6) vide memo no. 2192 dated 29.10.1980. It is further stated that the petitioners were brought in the work charge establishment by Memo Nos. 120 and 119 dated 18.01.1988 (Annexure '1' and '1/1' of the writ application). It is further case of the petitioners that they were discharging their duties in the work charge establishment regularly with the best of their capacities and with the satisfaction of all concerned.

It is stated that the respondent authorities stopped the salary of the petitioner since December, 1998 i.e. after lapse of



about 19 years of their engagement, then these petitioners approached this Court in CWJC No. 11393 of 1999 for payment of salary and upon a direction given by this Court vide order dated 04.09.2005, the respondent authorities made payment of arrears of salary of the petitioners till December, 2003. Again from January 2004, the salary was withheld whereafter these petitioners had moved this Court in CWJC No. 5724 of 2010 for payment of their salaries since January 2004 onwards. At this stage, it is stated that this Court vide order dated 01.12.2010 called upon the respondents to file their show cause as to why the previous order dated 04.09.2005 had not been complied with.

Learned counsel for the petitioners submits that though the arrears of salary were paid to the petitioners, the respondent no. 4 issued a general direction vide Memo no. 15373(S) dated 10.09.2010 (Annexure '3') to all the Superintending Engineer and Executive Engineer of the department to terminate the services of the work charge employees.

Learned counsel further submits that in view of the directions as contained in Annexure '3' to the writ application, respondent no. 8, the Junior Engineer has dispensed with the



services of the petitioners under impugned letter contained in Annexure '4' and '4/1' respectively.

Learned counsel submits that it is a matter of record that prior to termination of the engagement of the petitioners, the Finance Department had come out with Memo No. 9089 dated 20.08.2010 whereby a Committee of three Secretaries was constituted for regularization of the employees of the work charge establishment. It is submitted that instead of considering the name of the petitioners for regularization, they were removed from the work charge establishment in a completely arbitrary manner after their continuous service of 22 years in the work charge establishment.

Learned counsel has relied upon the order dated 27.02.2023 passed by this Court in CWJC No. 18853 of 2011 to submit that in similar circumstances, this Court had interfered with the impugned order in case of one Bhual Prasad who had also been removed from service from the work charge establishment. This Court has, in the said case relied upon a Coordinate Bench order in CWJC No. 17039 of 2013 whereunder another similarly situated employees namely Sri Brij Nandan Prasad has been reinstated in service. It is submitted that the case of the petitioners is similarly situated



with those persons.

Learned counsel for the State does not dispute the facts as to engagements of the petitioners in the work charge establishment and their continuous service in the establishment for about 22 years. A stand has been taken on behalf of the State that the petitioners may be directed to submit a representation to the concerned authorities who will consider the case of petitioner no. 1 in terms of the prayer made in the writ application and in case he is found similarly situated with others who have been given benefit of the judicial order of this Court, the same will be considered for the petitioner no. 1 also. So far as substituted petitioner no. 2 is concerned, the authorities will consider whether any consequential relief may be granted to her in the present circumstances where the original petitioner has already died.

Having regard to the stand taken on behalf of the State, this writ application is being disposed of granting liberty to the petitioners to approach the Principal Secretary, Road Construction Department, Government of Bihar with a comprehensive representation within a period of four weeks from today raising all such submissions which are available to them whereupon the Principal Secretary (respondent no. 2) shall



consider the same keeping in view the facts of the case and the
judicial pronouncements on the subject and shall take an
appropriate decision within a period of four months from the
date of receipt/ communication of a copy of this order.

This writ application is disposed of.

(Rajeev Ranjan Prasad, J)

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