

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19840 of 2021

=====

Muzaffarul Bari Ansari Son of Late Hakim Abdullah Resident of
Village - Khagra Kadam, P.S. Kishanganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Main Secretariat, Patna.
2. The Commissioner and Secretary, Department of Social Welfare (Previously known as Welfare Department) Government of Bihar, main Secretariat, Patna.
3. The Director, Directorate of I.C.D.S. Indira Bhawan 2nd floor, Boring Road, Patna.
4. The Commissioner and Secretary, Department of Finance, government of Bihar, New Secretariat, Patna.
5. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar.
6. The Incharge Officer, Establishment, Directorate of I.C.D.S. Indira Bhawan, Bihar, Patna.
7. The District Magistrate, Katihar.
8. The District Programme Officer, Child Development Project Officer, Katihar.
9. The Child Development Project Officer, Korha, District- Katihar.
10. Managing Director, Bihar State Construction Corporation Limited, Patna.

... .. Respondent/s

=====

=====

Appearance :

For the Petitioner/s :	Mr.Kishore Kumar Thakur, Advocate Mr.Braj Kishore Singh, Advocate
For the Respondent/s:	Mr.SunilKumar Mandal (SC3) Mr.Bipin Kumar, AC to SC 3

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-07-2023



Heard Mr. Kishore Kumar Thakur, learned counsel appearing on behalf of the petitioner and Mr. Sunil Kumar Manda, learned SC 3 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner was rendering his services as a Clerk in the office of the Directorate of Integrated Child Development Scheme (hereinafter to be referred as the 'ICDS'), pursuant to order contained in Memo No.375 dated 11.04.1997 (Annexure-2 to the writ petition).

3. The petitioner has preferred the present writ petition for giving him benefit of regularization with effect from the date of his deputation. The said grievance of the petitioner was not taken into consideration by the concerned authority, the petitioner was forced to file writ petition bearing CWJC No.5807 of 2016 praying therein for absorption. At the time of hearing, a writ application bearing CWJC No.10016 of 2007 was filed before this Court on behalf of the Bihar State Government Employees Association through its Secretary, Welfare as well as the Director, Integrated Child Development Scheme (ICDS) praying therein to accord benefit of permanent absorption to the members of the Association and others in the light of the provisions contained in letter No.447 dated 24.08.1996. The said writ petition was found to be not



maintainable. As the petitioner was aggrieved by non-compliance of the order passed by the writ court in CWJC No.10016 of 2007, he thereafter filed contempt petition bearing MJC No.1505 of 2017 for compliance of direction issued by another Co-ordinate Bench in CWJC No.10016 of 2007, vide order dated 06.04.2011, which is *inter alia* as under, referred hereinafter :

“I find that all petitioners who are members of Petitioner No. 1 "Association" as well as other petitioners, stands on similar footing as appellants of the LPA No. 608 of 2006 and its analogous appeals, as such entitled for similar relief. Accordingly, the Respondent Nos. 2, 3, 4 and 5 are directed to pass necessary order of absorption of all these petitioners. None of the petitioners shall be repatriated to those defunct Boards, Corporations, Public Sector Undertakings / Enterprises, which were their parent Department. Petitioners will be allowed to superannuate from the posts, they are working. They will be paid their salary, pensionary benefits, remaining on the same post.”

4. The contempt petition bearing MJC No.1505 of 2017 was finally heard on 20.02.2020 and observation was made that the petitioner was not member of the Association therefore, in pursuance of order dated 06.04.2011 passed in CWJC No.10016 of 2007 no order with regard to absorption or payment of pensionary benefits to the petitioner could be passed. Such stand was taken by the State Government, however, taking into consideration, the plight of the present writ petitioner, the Court had *inter alia* passed



following orders and directions in the said contempt petition,
which is re-produced hereinafter :

“..... I find that the petitioner of course was working as Accounts Clerk in the Department of Integrated Child Development Scheme but he retired in the year 2008 much prior to the order dated 06.04.2011, passed in CWJC No.10016 of 2007. This Court by order dated 06.04.2011 firstly directed the respondents to issue necessary order of absorption and thereafter allowed such persons who were working on deputation in the different departments of the Government of Bihar and brought on deputation from different defunct Boards, Corporations, Public Sector Undertakings/Enterprises who allowed them to work there till their retirement but the order does not speak about such persons who were working on deputation but since retired prior to the order dated 06.04.2011. Thus, I find that by not extending the pensionary benefits to the petitioner, the respondents have not violated the order of this Court, passed in CWJC No.10016 of 2007, therefore, no further action is required.”

5. The Stand taken by the respondent no.3 in the counter affidavit of the present writ petition is that this Hon'ble Court had dropped the contempt proceeding with above observation. Being aggrieved, the petitioner preferred LPA No.1640 of 2013 against the order dated 18.09.2013 passed in CWJC No.2852 of 2011. The LPA No.1640 of 2013 was dismissed by the Division Bench of this Court, vide order dated 15.04.2015 considering the fact that the claim of the petitioner for absorption from the date of deputation was found contrary to the judgment of



this Court. The matter travelled up the Hon'ble Apex Court and the Hon'ble Apex Court denied to interfere with the orders of this Court passed by the different Benches.

6. The petitioner in the present writ petition has limited prayer to the extent that his case be considered in the light of judgment passed on 25.02.2023 in CWJC No.213 of 2023. The petitioner submits that he should be given the same treatment as has been given to the similarly situated employees of BISCOMAUN and also in the light of resolution of the State Government contained in Memo No.4691 dated 14.09.2020, which squarely covers the case of the petitioner in the light of order dated 04.03.2020 passed by the Hon'ble Apex Court in Special Leave to Appeal (C) D.No.(s)15567 of 2018, pursuant to which the State Government resolution no.4691 dated 14.09.2020 has been issued by the Finance Department and in light of the said resolution, the petitioner be given the benefit of ACP/MACP.

7. Under the above background, the petitioner seeks to withdraw the present writ petition with a liberty to file a detail representation before the Commissioner and the Secretary, Department of Social Welfare, Government of Bihar and the Director, Integrated Child Development Scheme (ICDS). The concerned authorities before whom the petitioner files his detail



representation must ensure to take final decision on the basis of record relating to the petitioner and give benefit to which the writ petitioner is entitled in accordance with law within a period of six weeks from the date of filing of the representation.

8. With the above observation/direction, the present writ petition is disposed of.

9. There will be no order as to costs.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	25.07.2023
Transmission Date	NA

