

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18853 of 2011

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Bhual Prasad, Son Of Late Suryanath Prasad, Resident Of Mohalla V.I.P. Colony, Ward No. 1, Police Station Bhabhua Town, District Kaimur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Deputy Secretary, Road Construction Department, Government Of Bihar, Patna.
3. The Engineer-In-Chief, Road Construction Department, Government Of Bihar, Patna.
4. The Chief Engineer, Road Construction Department, Bhojpur Road Circle, Bihar, Patna.
5. The Superintending Engineer, Bhojpur Road Circle, Road Construction Department, Ara.
6. The Executive Engineer, Bhabhua Road Division, Road Construction Department, Bhabhua, Kaimur.
7. The District Magistrate, Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Aditya Nath Jha, Advocate
For the Respondent/s : Mr. Madanjeet Kumar, GP-20

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 27-02-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioner in the present case is seeking a writ in the nature of Certiorari to quash and cancel the office order dated 21.07.2011 as contained in Memo No. 584 issued by the Executive Engineer, Bhabua Road Division, Bhabua contained in Annexure '4' to the writ application and the consequential order contained in Memo No. 13573 dated 10.09.2010 issued



under the signature of the Deputy Secretary, Road Construction Department, Government of Bihar, Patna whereby a direction has been issued to all the Superintending Engineers of Road Construction Department (including national highways) and the Executive Engineers to remove the work charge employees who entered into work charge establishment after 23.10.1987.

3. Learned counsel for the petitioner submits that vide Memo No. 584 dated 21.07.2011 (Annexure '4'), the petitioner has been removed from the work charge establishment.

4. It is the case of the petitioner that he was appointed in the year 1984 as daily-wager and was serving the Road Construction Department as Road Roller Driver from 15.06.1984. His service was transferred to the work charge establishment vide office order dated 21.11.1995 contained in Memo No. 159/95 read with 1645 and accordingly the petitioner joined on 22.11.1995 under the work charge establishment.

5. Learned counsel submits that the petitioner was working and discharging his duties to the satisfaction of all concerned but suddenly the Department fixed cut off date of 23.10.1987 and issued a Memo No. 13573(S) dated 10.09.2010 to all the Superintending Engineers and Executive Engineers under Road Construction Department directing them to



retrench/terminate those employees who have been appointed after 23.10.1987 under work charge establishment.

6. Learned counsel submits that by the impugned order as contained in Annexure '4', petitioner has been removed without any show-cause and without serving the relevant documents upon him. It is also stated that the juniors to the petitioner are still working in the work charge establishment itself while the petitioner has been terminated.

7. Learned counsel for the petitioner has relied upon a judgment dated 02.05.2005 passed by a learned Co-ordinate Bench of this Court in CWJC No. 14280 of 2003 (Mahesh Bhagat Vs. The State of Bihar and Others). It is submitted that in the said case the learned Co-ordinate Bench noticed the memo issued by the Finance Department being Memo No. 1344 dated 4th February, 1949 laying down condition of services of employees of work charge establishment and published in Bihar Gazette No. 17 dated 26th April, 1950 Political and Appointment Department Notification dated 15th April, 1950.

8. The learned Co-ordinate Bench having noticed the Rule found that the subsequent resolution of the Department cannot take away the benefits of regularization or time-bound promotion from the work charge employees. It is submitted that



instead of considering the case of the petitioner for absorption/regularization, the petitioner has been wrongly retrenched/terminated.

9. Learned counsel has further relied upon a learned Co-ordinate Bench judgment of this Court in CWJC No. 17039 of 2013 to some extent that the petitioners therein were similarly situated with the present petitioner. The learned Co-ordinate bench noticed therein that the State Government had come out with a new circular no. 10710 dated 17.10.2013 by virtue of which not only the cut off date for persons engaged on daily-wagers has been extended and also the process and procedure for regularization have been laid down and many a persons derived benefit of the said circular. The learned Co-ordinate Bench, therefore, quashed the impugned orders and directed the respondent authorities to consider the case of the petitioner afresh in terms of circular dated 17.10.2013. A similar direction has been sought for as regards the present petitioner as well.

10. On the other hand, learned counsel for the State has opposed this writ application. Learned counsel has relied upon Annexure 'A' to the counter affidavit to submit that vide Memo No. 6394 dated 23.10.1987, the Deputy Secretary to the Government in the Department of Finance had issued the



resolution regarding the regularization of the employees appointed after 23.07.1975 in the work charge establishment. It is stated that in the resolution dated 23.10.1987, it was clearly provided that in future no new appointment shall be made under the work charge establishment. Despite this specific embargo created by the resolution dated 23.10.1987, if the petitioner was brought in the work charge establishment in the year 1995, no benefit shall accrue to the petitioner.

11. As regards the resolution contained in Memo No. 10710 dated 17.10.2013 (Annexure 'D' to the counter affidavit), learned counsel for the State points out that the cut off date was extended to 11.12.1990. It is stated that those employees who were appointed in the work charge establishment on or before 11.12.1990 were considered for regularization/absorption. Referring to paragraph '3' of the resolution dated 17.10.2013, learned counsel submits that the daily-wagers who were engaged before 11.12.1990 were considered for regularization vide Department of Personnel and Reforms Resolution No. 489 dated 10.05.2005. It is his submission that the case of the petitioner would not be covered under Resolution dated 17.10.2013.

12. This Court has heard learned counsel for the



petitioner and learned counsel for the State. So far as the facts are concerned, it is evident from the records that vide Annexure 'A' to the counter affidavit as contained in Memo No. 6394 dated 23.10.1987, the Department of Finance, Government of Bihar laid down the guidelines for regularization of the employees who were working in the work charge establishment after their appointment from 23.07.1975. In this resolution, paragraph '6' specifically states as under:-

“6. भविष्य में किसी भी स्थिति में कार्यभारित स्थापना में कोई नई नियुक्ति नहीं की जायगी”

13. But the pleadings available on record would show that despite this mandate the employees were brought in the work charge establishment.

14. This Court finds from the statements made in the writ application that in paragraph '12' there is a specific statement of the petitioner that juniors to the petitioner were still working in the work charge establishment whereas the petitioner has been terminated. In the counter affidavit there is no denial of the specific assertion of the petitioner in the writ application.

15. Learned counsel for the State was called upon to answer as to whether the petitioners Brijanandan Prasad and Ram Lakhan Prasad have been given benefit of the said circular or not. Learned counsel for the State is not aware of the same.



16. Learned counsel for the petitioner has drawn the attention of this Court towards the supplementary affidavit (indeed it is a second supplementary affidavit) wherein a statement has been made that following the judgment of the learned coordinate Bench in CWJC No. 17039/2013 Sri Brij Nandan Prasad has been reinstated in service. In this regard reliance has been placed on memo no.8541(s) dated 05.09.2014.

17. This Court finds that the learned coordinate Bench had allowed the writ application on the ground of parity because it was contended that several persons similarly situated have been regularized taking benefit of the circular no. 10710 dated 17.10.2013.

18. Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that the petitioner has been able to make out a case of equality before law. The principle of parity needs to be applied in his case. Whatever be the contention of the respondents, the facts remain that they are not denying to have engaged the persons junior to the petitioner in the work charge establishment. The records speak for themselves. They do not deny to have given the benefit to the persons similarly situated to the petitioner. If it is so, there is no reason why the case of the petitioner could not be



considered like the cases of similarly situated persons.

19. This Court, therefore, sets aside the impugned orders as contained in Annexure '2' and '4' respectively. The Principal Secretary, Road Construction Department, Government of Bihar is directed to consider the case of the petitioner keeping in view the cases of similarly situated persons who have been reinstated in the work charge establishment.

20. Let the entire exercise be completed within a period of three months from the date of receipt/communication of a copy of this order.

21. It goes without saying that if the case of the petitioner is found similarly situated with others who have been reinstated and the petitioner has not attained the age of superannuation, he shall also be reinstated in the work charge establishment with all consequential benefits. If the petitioner has attained the age of superannuation, the competent authority shall consider allowing him the consequential reliefs.

22. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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