

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.444 of 2022

In
Civil Writ Jurisdiction Case No.14199 of 2019

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Most. Ahilya Devi Wife of Naresh Tiwari, Resident of Mohalla - Sanjay Nagar, Road No. 3, P.S. - Jakkanpur, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Special Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Chief Engineer-I, Rural Works Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Aara.
6. The Executive Engineer, Rural Works Department, Works Division, Aara.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Nandan, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-08-2023

The appeal is against the judgment of the learned Single Judge, which found the sympathetic consideration sought for by the petitioner for a regular appointment, to be unsustainable especially since her husband, died while he was working in a Work Charge Establishment. Finding that there is a total absence of a policy resolution or decision supporting the petitioner's claim, the writ petition was dismissed.

2. The learned counsel for the petitioner/appellant



would seriously assail the decision, pointing out that the appellant herself was continued for long on the Work Charge Establishment, even after the death of the appellant's husband.

3. The learned counsel for the appellant relies on two decisions of this Court. One of a Division Bench and the other of a learned Single Judge; respectively, ***Koshi Project Workers Association v. State of Bihar; 2007 1 PLJR 358*** and ***Triveni Mahto v. State of Bihar; 2005 4 PLJR 505***.

4. In ***Triveni Mahto*** (supra), the petitioners were engaged as daily wagers, in works which were perennial in nature. Their cases were considered for absorption in Work Charge Establishment, and after absorption, they continued in service on a regular salary. Later, their absorption was attempted to be cancelled since it was found to be contrary to a Circular/Resolution of the Finance Department. The plea of the State was only that none of the petitioners had completed 240 days in continuous service. This Court, based on an earlier decision, found that the engagement of the writ petitioners and their absorption came long before the resolution of the Finance Department. It was found that the petitioners were engaged prior to the resolution of the Finance Department and had completed 240 days prior to the resolution in the year 1987. We cannot find any parallel or the principles applicable to the present case.



5. In *Koshi Project Workers Association* (supra), the challenge was against the cancellation of promotions to the post of Clerk/Assistant. The petitioners were originally engaged as *Majdoors* in the Work Charge Establishment and later promoted in the year 1973. The reversion to the original post of *Majdoor* occurred in the year 2002 on the finding that promotion from the Work Charge Establishment is not permissible. The Court while accepting the fact that there is vast difference between the Work Charge Establishment and Permanent Establishment; all the same found that the order impugned was issued on the wrong premise that the writ petitioners were employed under the Work Charge Establishment. It was found that the State Government incorporated a Clause in the P.W.D. Code Volume-I providing for a Work Charge Establishment of permanent nature; required for 12 months in a year and for long and indefinite periods. The writ petitioners in the said case were promoted to the post of Clerk/Assistant and thus became employees of the Permanent Establishment. We do not find any assistance from the aforesaid judgment also, for enabling the claim of the appellant herein.

6. Insofar as the appellant is concerned she is said to have been terminated from the post of Work Charge Establishment by Memo No. 806 dated 05.11.2014 passed by the



Superintending Engineer, Rural Works Department, Works Circle, Ara. A writ petition was filed in the year 2014 which was disposed of directing a representation to be considered. The representation was considered and rejected by Annexure-1 against which the appeal is filed.

7. The appellant's husband was appointed as *Chowkidar* in the Work Charge Establishment on 04.08.1987 and received salary up to May 1990. The appellant's husband was missing from 08.07.1990 upon which the family was thrown to the streets. An application was made by the petitioner on 21.12.1990 and the petitioner, on sympathetic considerations, was appointed on daily wages for three months. The daily wage employment was extended from time to time and later she was appointed in the place of her husband as work charge Chowkidar in the year 1991.

8. Admittedly, the work charged employees who can be regularized are only those who have been appointed prior to 21.10.1984. The appellant's case is that her case stands on a different footing and ought to have been considered on humanitarian grounds.

9. We have to notice that this is the context in which the matter was remanded for consideration of a representation. The representation was disposed of by Annexure-1, which



specifically spoke of Financial Department memo no. 10710 dated 17.10.2013 relating to conversion of Work Charge Establishment to Regular Establishment of only those persons appointed before 11.12.1990. The applicant is said to have been appointed in the Work Charge Establishment only on 03.03.1992, hence the representation was rejected with right reserved to the applicant to submit an application under the process for district level panelisation.

10. Regularization, as the guidelines stand now, cannot be considered. We find absolutely no reason to interfere with the rejection of the representation, in the absence of any Rule for regularization.

11. We have already found that the judgments cited do not apply to the appellant’s case.

12. The appeal hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
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