

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.77 of 2023

1. Tej Narayan Singh, aged about 57 years, Gender- Male, Son of Basdudeo Singh, Resident of Village- Miyari, P.S.- Sarairanjan, District- Samastipur.
2. Ram Lagan Rai aged about 59 years, Gender- Male, Son of Raghuvir Yadav, Resident of Village- Khesarahiya, Singhara Bujurg, P.S.- Mahua, District- Vaishali.
3. Shankar Thakur aged about 60 years, Gender- Male, S/o Anup Thakur, Resident of Village- Sadipur, P.S- Bangra, District- Samastipur.
4. Bisheshwar Yadav aged about 58 years, Gender- Male, S/o Chulahi Yadav, Resident of Village- Madhopur, P.S.- Simri, District- Samastipur.
5. Nand Kishore Mandal aged about 58 years, Gender- Male, S/o Parikshan Mandal, Resident of Village- Narma, P.S.- Hathauri, District- Samastipur.
6. Madhav Chaturvedi aged about 60 years, Gender- Male, S/o Late Jitendra Kumar Chaturvedi, Resident of Village- Shahpur Patori, P.S.- Shahpr Patori, District- Samastipur.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Public Health and Engineering Department, Vishwasaraiya Bhawan, Patna.
2. The Principal Secretary, Public Health and Engineering Department, Government of Bihar, Vishwasaraiya Bhawan, Patna.
3. The Engineer-in-Chief Cum Special Secretary, Public Health and Engineering Department, Vishwasaraiya Bhawan, Patna.
4. The Superintending Engineer, Public Health and Engineering Circle, Darbhanga.
5. The Executive Engineer, Public Health Engineering Division, Samastipur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Gajendra Kumar Jha, Advocate Mr.Sushil Kumar Jha, Advocate
For the Respondent/s	:	Mr.Vishwambhar Prasad, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 16-02-2023 Heard learned counsel for the petitioners and learned counsel for the State.

2. Petitioners in the present case are seeking a writ in the nature of Mandamus commanding the respondents to release



the arrear salary of the petitioners for the period June, 2002 to 19.06.2014 i.e. the period during which the petitioners were working on muster roll as daily rated employees after their reversion from the work charge establishment.

3. It is the submission of the petitioners that the arrear salary for this period be paid at the rate applicable to the work charge establishment after adjusting the amount already paid to them. They further pray for revision of their salary after extending the benefit of ACP and two MACPs from 20th June, 2014 as according to them the same has been extended to other similarly situated employees of the Division.

4. From the submissions made so far, the admitted position is that these petitioners were working at muster roll prior to 31.03.1982. They were taken to the work charge in February, 1988 they were served with a show cause notice dated 13.04.2002 to explain as to why they should not be reverted as daily rated employees. It was a general notice issued to all the work charge employees of Public Health & Engineering Department (hereinafter referred to as the “PHED”), leading to filing of a number of writ applications.

5. In course of argument, this Court has been made available a copy of the order dated 19.09.2011 passed by a



learned Coordinate Bench of this Court in CWJC No. 62 of 2010 wherein the present petitioners (except petitioner no. 2) were the petitioners. In the said writ application, they challenged their reversion to the daily rated worker. The learned Writ Court heard the petitioners and the State, recorded a finding that “if the induction into the work charge establishment itself was contrary to law the question of any benefit being founded on such illegal induction does not arise...”

6. This Court has been informed that the order passed in CWJC No. 62 of 2010 was subject to the LPA No.1848 of 2011. The Hon’ble Division Bench took note of the fact that the order of reversion was made in compliance of the principles of natural justice and that the said order was not challenged by any of the appellants, thus, the order became final. In clear words, the Hon’ble Division Bench held that no case of interference is made out. At this stage, learned counsel for the appellants claimed that under Government’s Notification dated 17th October, 2013, the Resolution dated 17th October, 2013 and the letter of instruction dated 16th November, 2013, the appellants have a right to regularization in service. After taking note of the submissions of learned counsel for the appellants, the Hon’ble Division Bench observed as under:-

“If that be so, the above referred Notification and



the Resolution dated 17th October, 2013 and the letter of instructions dated 16th November, 2013 shall give a fresh cause of action. The appellants may agitate their claim under the said Notification, Resolution and the communication before the State Government.

We clarify that we have not examined either the aforesaid Notification and the Resolution dated 17th October, 2013 or the letter of instructions dated 16th November, 2013.”

7. From the judgments referred above, this much is crystal clear that the petitioners having been unsuccessful in challenging their reversion to the daily rated worker cannot claim any legal right to get salary attached to work-charge establishment for the period June, 2002 to 19.06.2014.

8. So far as the case of the petitioners is concerned, admittedly they have been absorbed/ regularized against the newly created posts vide Memo no. -3/संघ-105/2009-899 dated 20.06.2014 and 833 dated 09.06.2014 in the pay scale of 4,440-7,440 with the grade pay- 1,600/-. It is evident that so far as Memo No. 3/ Misc.-10-105/13-925 dated 16.11.2013 is concerned, it was not in respect of the petitioners. On the date of issuance of the said Memo dated 16.11.2013, petitioners had not been regularized. Their regularization happened only by virtue of Memo No. 54 dated 21.06.2014 (Annexure ‘1’ to the writ application). They have accepted their regularization without any protest.

9. From the statements made in the writ application



itself it would appear that these petitioners have made a representation dated 26.10.2022 (Annexure '4' to the writ application) after about eight years of their absorption/regularization. They are now claiming similar benefits as have been given to Yogendra Prasad Asthana, Vidyanand Jha and some other petitioners in CWJC No. 7211 of 2013 and its analogous matters.

10. It is a matter of record that CWJC No. 7211 of 2013 and analogous matters were disposed of by a learned Coordinate Bench of this Court on 16.05.2013 wherein the learned Coordinate Bench noticed the orders passed by this Court on 09.03.2011 in CWJC No. 10243 of 2006 (Vidyanand Jha and Others vs. the State of Bihar and Others) another order dated 20.12.2011 in CWJC No. 6004 of 2007 (Awadhesh Kumar vs. the State of Bihar and Others) and came to a conclusion that the writ petitioners shall also be paid their difference of salary as given to Awadhesh Kumar for the period 01.06.2002 to 30.11.2006. A careful perusal of the Memo No. 925 dated 16.11.2013 (Annexure '5' to the supplementary affidavit of the petitioner) would show that the said memo was issued keeping in view the order of this Court in CWJC No. 7211 of 2013 (Yogendra Prasad Ashthana vs. The State of Bihar and Others).



Apparently, the case of Yogendra Prasad Ashthana and others which were subject matter of consideration before this Court was in respect of those daily rated employees who had been earlier working in the work charge establishment but were reverted and later on absorbed/ regularized in the year 2006.

11. Learned counsel for the petitioners has relied upon the order dated 28.06.2017 passed by another learned Coordinate Bench of this Court in the case of Birendra Kuer (Annexure '2' to the writ application). A bare perusal of the order as contained in Annexure '2' would show that learned counsel for the petitioners did not place the order dated 19.09.2011 passed in CWJC No. 62 of 2010 and the order of the Hon'ble Division Bench in LPA No. 1848 of 2011 in which these petitioners (except petitioner no. 2) were parties. Those orders of the learned Coordinate Bench as well as the Division Bench were directly binding upon those petitioners. It further appears that the fact that these petitioners were absorbed/regularized against newly created posts is even as duly mentioned in the order of regularization as contained in Memo No. 54 dated 21.06.2014 (Annexure '1' to the writ application), it was not brought to the notice of the learned Coordinate Bench while passing Annexure '2' of the writ application.



12. Learned counsel for the petitioners has given much emphasis on his submissions that these petitioners having been regularized by virtue of Annexure '1' to the writ application, would be entitled to get the arrear of salary for the period they were reverted as daily rated worker from the work charge establishment. He has relied upon the Government Notification dated 16.11.2013.

13. This Court has been made available copy of the order dated 03.05.2016 passed by learned Co-ordinate Bench in CWJC No. 13462 of 2013 in which the petitioners similarly situated to the present petitioners are said to have approached this Court for regularization of service. They were regularized during pendency of the writ application, they sought to claim the difference of arrears of salary for the period they worked on muster roll as daily wager. The learned Co-ordinate Bench rejected their prayer in the following words:-

“The petitioners have claimed their salary from the date of appointment. They cannot claim their salary in regular establishment before their absorption in the regular establishment.”

14. Following the aforesaid order of the learned Co-ordinate Bench in CWJC No. 13462 of 2013, the another learned Co-ordinate Bench has passed a reasoned order dated 28.07.2022 in CWJC No. 195 of 2018. The learned Co-ordinate



Bench found that the order dated 03.05.2016 in CWJC No. 13462 of 2013 had attained finality because neither any review was filed nor any letters patent appeal was filed for setting aside of that order.

15. At this stage, learned counsel for the petitioners submits that after CWJC No. 195 of 2018 has been dismissed, the petitioners in those cases have filed letters patent appeal against the order dated 28.07.2022 in CWJC No. 195 of 2018. At this stage, LPA No. 412 of 2022 has been filed challenging the order dated 13.05.2016 in CWJC No. 13462 of 2013.

16. On the other hand, learned counsel for the State has submitted that the case of the petitioners stand on altogether a different footing. These petitioners (except petitioner no. 2) were the petitioners in CWJC No. 62 of 2010 and LPA No. 1848 of 2011, therefore, the orders passed by the learned Co-ordinate Bench of this Court and the Hon'ble Division Bench would be binding upon them and those will operate as *res judicata*. The petitioner no. 2 had accepted his reversion without any challenge. It is submitted that such issues which have already been settled in respect of these petitioners need not be gone into afresh after all these years. It is further submitted that the submissions of the petitioners are completely misconceived



inasmuch as they are unable to understand that one of them had not challenged his reversion and others challenge to the reversion as daily rated employees has already failed, hence, any relief by way of allowing them difference of salary treating them in work charge establishment for the said period would only amount to reviewing the order of this Court in CWJC No. 62 of 2010.

Consideration

17. Having heard learned counsel for the petitioners and the State, this Court at first instance finds that the petitioners (except petitioner no. 2) have concealed/suppressed material fact that these petitioners (except petitioner no. 2) were the petitioners in CWJC No. 62 of 2010. The petitioners were represented by Mr. Gajendra Kumar Jha, learned Advocate at the relevant time. The same and one learned counsel is representing them in the present case also. Learned counsel was fully aware of the fact as to the previous ground of litigation in which these petitioners (except petitioner no. 2) were parties but nothing has been mentioned in this regard in the writ application. The orders passed by the learned Writ Court and the Hon'ble Division Bench are also not mentioned in the writ application. It is only when in course of hearing, this Court went



on making query, the facts revealed. So far as petitioner no. 2 is concerned, he did not join others on earlier occasion and accepted his reversion as daily wager.

18. Further this Court agrees with the submission of learned counsel for the State that the issues relating to reversion of the petitioners from work charge establishment to muster roll as daily rated worker during the period June 2002 to 19.06.2014 and any consequential benefit thereto is not open to be agitated at this stage. The order of the learned Co-ordinate Bench passed on 19.09.2011 in CWJC No. 62 of 2010 and the Hon'ble Division Bench Judgment in LPA No. 1848 of 2011 are speaking for themselves. This Court finds that when the Hon'ble Division Bench had already dismissed the letters patent appeal, learned counsel for the appellants referred Government Notification dated 17th October, 2013 and 16th November, 2013 to submit that those notifications confer right of regularization to the appellants. The Hon'ble Division Bench did not go into the merit of the contention and observed that "if that be so, those notifications shall give a fresh cause of action."

19. Be that as it may, this Court finds that the Government Notification as contained in Memo No. 925 dated 16.11.2013 relates to the employees who were reverted as daily



wagers but were absorbed in service in the year 2006. Paragraph '2' of the notification clearly states that all those employees who have already been absorbed, their cases would be considered in the light of the judgment of the Hon'ble High Court in CWJC No. 7211 of 2013. Admittedly, these petitioners had not been absorbed on the date of Notification dated 16.11.2013.

20. This Court has already noticed that the petitioners were absorbed only after creating new posts vide Memo dated 20.06.2014 and their absorption took effect by virtue of Office order dated 21.06.2014 (Annexure '1' to the writ application).

21. Thus, in the opinion of this Court, the petitioners are only indulged in fighting a luxurious litigation after about 8 years of their absorption. In the process, they have not come to this Court with clean hands. As result thereof, this writ application is dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only/-).

22. Let this amount be deposited with Patna High Court, Legal Services Authority within four weeks from today.

(Rajeev Ranjan Prasad, J)

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