

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12458 of 2012

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1. Keshav Tiwari S/O Late Chandeshwar Tiwari Resident Of Village- Kandha Pakar, P.O- Kandha Pakar, P.S- Aswan, District- Siwan.
 2. Indrajit Kumar S/O Late Ram Raj Puri Resident Of Village- Lohari, P.O- Gurukul, Mehiya, P.S- Muffasil Chapra, District- Chapra.
 3. Arun Kumar Singh S/O Late Ram Narayan Singh Resident Of Village P.O.P.S- Manjhi, District- Chapra.
 4. Naval Prasad S/O Late Rajendra Prasad Resident Of Village- Tikka Bigha Bhojwar P.O.P.S- Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Commissioner cum Secretary, Govt. Public Health Engineering Department, Bisheshwaraiya Bhawan, Bailey Road, Patna.
2. The Engineer In Chief Cum Special Secretary, Public Health Engineering Department, Bisheshwariaya Bhawan, Bailey Road, Patna.
3. The Chief Engineer Mechanical, Public Health Engineering Department, Patna.
4. The Superintending Engineer, Ph Mechanical Circle, Muzaffarpur.
5. The Superintending Engineer, Phe Circle, Chapra.
6. The Executive Engineer, Phe Mechanical Division, Chapra.
7. The Executive Engineer, Phe Division, Chapra.

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 6328 of 2012

In

Civil Writ Jurisdiction Case No.12458 of 2012

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1. Keshav Tiwari and Ors. Son Of Late Chandeshwar Tiwari Resident Of Village Post- Kandh Pakar, P.S.- Asawan, District- Siwan
 2. Indrajit Kumar Son Of Late Ram Raj Puri Resident Of Lohari, P.O.- Gurukul Mehiya, P.S.- Muffasil Chapra, District- Chapra
 3. Arun Kumar Singh Son Of Late Ram Narayan Singh Resident Of Village Post P.S.- Manjhi, District- Chapra
 4. Naval Prasad Son Of Late Rajendra Prasad Resident Of Tikka Bigha Bhojwar, P.O. P.S.- Bodh Gaya, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Ravindra Panwar, The Commissioner Cum Secretary, Govt. Department Of Public Health Engineering, Bisheshwariya Bhawan, Bailey Road, Patna
3. Mr. Surendra Kumar, The Chief Engineer Mechanical, Public Health Engineering, Bisheshwariya Bhawan, Bailey Road, Patna

... .. Opposite Party/s



Appearance :

(In Civil Writ Jurisdiction Case No. 12458 of 2012)

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate

For the Respondent/s : Mr. Kameshwar Kumar, GP-17

(In Miscellaneous Jurisdiction Case No. 6328 of 2012)

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate

For the Opposite Party/s : Mr. Kameshwar Kumar, GP-17

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-04-2024

Heard Mr. Lalan Kumar Singh, learned counsel appearing on behalf of the petitioners and Mr. Kameshwar Kumar, learned GP-17 for the State.

2. Undisputed facts are that the petitioner nos. 1 and 2 were initially appointed on the post of Plumb Khalasi in the pay scale of Rs. 2550-3200 and petitioner nos. 3 and 4 were initially appointed on the post of Key Man Chaukidaar in the pay scale of 2550-3200. The services of the petitioners no. 1 and 2 were taken into regular establishment on 01.12.2006 in compliance of the order passed in CWJC No. 8312 of 2008 and services of the petitioners no. 3 and 4 were taken into regular establishment on 28.11.2006 in compliance of the order passed in CWJC No. 6739 of 2008. The seniority list of the petitioners was accordingly rectified. It has been informed by the learned counsel appearing on behalf of the petitioners that petitioners no. 1 and 2 were taken into regular establishment with effect from 20.06.2014. So far as, petitioners no. 3 and 4 are concerned, as per seniority list, position of petitioner no. 3 is at



serial no. 81 (in the general category) and petitioner no. 4 is at serial no. 45 (in the Backward Class Category) in pay scale of Rs. 350 - 425/- as on 18.04.1988 and, thereafter, it was revised with effect from 01.01.1996 in pay scale of Rs. 2550-3200/-.

3. Learned counsel appearing on behalf of the petitioners submitted that petitioners No.3&4 were regularized with effect from 28.11.2006. Learned counsel submitted that vide order dated 13.07.2006 in CWJC No. 706 of 2002 analogous with 165 cases, in which the petitioners were also one of the writ petitioners, the Division Bench had directed to constitute a committee of Secretaries where the petitioners were directed to place their claim and their case for regularization be decided by the said Committee as per Constitution Bench judgment of the Apex Court in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in (2006) 4 SCC 1. Learned counsel submitted that in the said case, the Apex Court has laid down a law that such of those persons whose services have been regularized, the same cannot be reopened to nullify their regularization. Learned counsel in these backgrounds submitted that the persons junior to them have been regularized and in this regard, by filing reply to the counter affidavit, he has brought on record giving specific names of



such employee in paragraph no. 6. The petitioners have been discriminated. The petitioners are entitled for being absorbed from the date when they were absorbed in the service. Learned counsel further submitted that the case of the petitioners is exactly on the similar footing of those of one Shiv Shankar Choubey and Gupteshwar Singh, who had preferred CWJC No. 2181 of 2013 and learned single judge vide order/judgment dated 09.01.2018 had granted them relief considering the fact that the petitioners will be treated to be regular employee of the department from the date of their regularization i.e. 01.12.2006 and are entitled to all benefits of regular employee including continuity of service and, as such, petitioners are entitled for difference of salary from the period 29.12.2011 till 20.06.2014. Learned counsel further submitted that the State has challenged the said order dated 09.01.2018 passed in CWJC No. 2181 of 2013 and Division Bench of this Court has upheld the order passed by the learned Single Judge. The petitioners submitted that so far as, payment of salary to the regular employee are concerned, necessary direction has already been issued to the concerned Executive Engineer.

4. *Per contra*, learned counsel for the respondent/s filed their counter affidavit in which he has admitted that



petitioners were appointed as daily wager in the period 1980-1981 and worked as daily wager till the year 1988-1990 and, thereafter, they were taken into work charge establishment and continued there till the year 2002. In view of the resolution of the Finance Department dated 23.10.1987, the petitioners were reverted back as daily wager employee. The order of resolution dated 13.04.2002 was challenged by the petitioners in CWJC No. 706 of 2002 and the same was made analogous with 165 cases and vide order dated 30.07.2006, the Division Bench of the High Court had constituted a Committee of Secretaries, where the petitioners were directed to place their claim and their case of regularization were decided by the said Committee as per the constitution Bench judgment of the Apex Court in case of *Uma Devi (Supra)*. In compliance of the said order, a 'Three Men Committee' was constituted in the department presided by Secretary, Health Public Engineering Department, Government of Bihar. As per the guidelines of the State Government, those who had been working as a daily wager, as well as, those who were terminated prior to compensate and those who were working as regular employee in work charge establishment and their services were reverted as daily wager were required to be considered for absorption, regularization against newly created



sanctioned and vacant post. The petitioners no. 1 and 2 were absorbed and regularized on Class-IV post vide memo dated 1123 dated 28.11.2006 on the post of Plumb Khalasi and petitioners no. 3 and 4 on the post of Keyman Chaukidaar in pay scale of 2550-3200. The petitioners were reverted to daily wager in compliance of Memo No. 591 dated 17.07.2007, which petitioners had challenged in CWJC No. 6739 of 2008 and CWJC No. 8312 of 2008. The order of regular to that of daily wager was set aside by the High Court and they were deemed to continue as regular employee of work charge establishment till their regularization under regular establishment. The State Government vide Memo No. 925 dated 16.11.2013 decided in compliance of order of this Court to pay difference of salary for the period 2002 to 2006 treating them as a regular employee under work charge establishment.

5. In paragraph no. 24 of the counter affidavit it has been stated that in compliance of the order dated 30.06.2011 passed in CWJC No. 6739 of 2008 and CWJC No. 8312 of 2008, the Principal Secretary, Public Health Engineering Department, Government of Bihar, after considering the case of the petitioner passed a detailed reasoned order no. 193 dated 29.12.2001 and order no. 553 dated 05.03.2012 (Annexure-11



series to the writ petition), which are under challenge before this Court. The question with respect to readjustment of the petitioners don't seem to be proper and reason for the same has already been stipulated in the reasoned order.

6. Having heard the rival submissions made on behalf of the parties, as well as, the fact that the respondents have not denied that the juniors to the petitioners have been regularized, the other reason for denying the claim of the petitioner that there was no post at the time of initial appointment is also incorrect and inspite of Finance Department Circular, petitioners no. 1 and 2 were appointed in work charge establishment from 1988 to 13.04.2002 and petitioners no. 3 and 4 were appointed in work charge establishment on 01.05.1990.

7. In the light of law laid down by the Apex Court in the case of Uma Devi (supra), the writ petition is allowed.

8. M.J.C. No. 6328 of 2012 is also disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

