

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14986 of 2011

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Upendra Narayan Singh S/O Late Rajeshwar Prasad Singh R/o Vill P.O.-
Rampur, P.S.- Simri Bakhtiyarpur, Distt.- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary to Government. P.H.E.D. Bisheshwariaya Bhawan, Bailey Road, Patna
2. The Engineer-In-Chief-Cum-Special Secretary P.H.E.D Bisheshwariaya Bhawan, Bailey Road, Patna
3. The Chief Engineer mechanical, P.H.E.D Bisheshwariaya Bhawan, Bailey Road, Patna
4. The Superintending Engineer, P.H.E.D Circle, Purnea, Dept. of Public Health Engineering , Bihar, Patna.
5. The Executive Engineer, P.H.E.D Division, Arariya, Dept. of Public Health Engineering, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate
For the Respondent/s : Mr. Sita Ram Yadav, GP 16

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 24-06-2024

Heard Mr Lalan Singh, learned counsel for the petitioner and Mr. Sita Ram Yadav, learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for direction upon the respondents to consider the post of the work Sarkar and modified the order of absorption in respect of petitioner vide memo number 1002 dated 01.12.2006 in view of the settled principle in law that absorption of service in the same rank and pay not lower post and lower pay scale, when the similarly situated and junior persons who were appointed by the



same letter vide memo number 2300 dated 14.09.1981 have been absorbed in the same rank and pay same and they are enjoying all the benefits of service and petitioner has deprived the said benefits of service by the inaction of the respondent authority.

3. Learned counsel for the petitioner submits that the petitioner was duly appointed in the year 1972 by the competent authority in the light of the policy decision of the state government against sanction strength vacant post on the permanent nature of work in daily wages prior to cut off date fixed by the state government. In the year 1973 petitioner was taken in the regular scale of pay with all admissible allowance by the order of the competent authority. The petitioner was appointed on vacant post of class-III as work Sarkar by the competent authority in the regular scale of pay of Rs. 220-315 with all allowance in the work charge establishment on the basis of qualification vide memo number 2300 dated 14.09.1981. The petitioner was appointed with the regular scale of pay of the said post which was made on the basis of the cadre strength prepared by the competent authority and the petitioner had been working against the said post. The service book of the petitioner was also opened and petitioner has received the regular scale of pay with



all benefits of permanent employee and he has also granted revised scale of pay, GPF and LIC amount was also started to be deducted from his monthly salary since the date of appointment. The state government has framed circular for work charge employees which suggest that after absorption in the permanent establishment the period which has been spent in the work charge establishment will be counted/treated for the purpose and benefit of the pension, selection grade and time bound promotion vide memo no. 1503 dated 27.03.1987 (Annexure-2).

4. Learned counsel for the petitioner submits that many junior persons and similarly situated persons have been taken from work charge establishment to regular establishment/permanent establishment in the light of memo no. 1337 dated 29.07.1971 by the department. The post of the work charge establishment who were completing 10 years of service have been made converted into regular establishment vide memo no. 533 dated 22.06.1993.

5. Learned counsel for the petitioner submits that it is pertinent to mention that all Junior persons and similarly situated persons after conversion in regular establishment have granted time bound promotion and other benefits of service by the competent authority of the department. The petitioner has



filed several representations before the competent authority of the department but no action has been taken by the concerned respondents. He further submits that after 31 years of satisfactory service the authority converted the service of the petitioner from regular scale of pay to daily wages with effect from 01.06.2002 in light of the Resolution no. 6394 dated 23.10.1987, without any opportunity given to the petitioner. The petitioner has filed representation dated 23.05.2002 for consideration of the aforesaid conversion before the competent authority but no action has been taken by the concern respondents, then the petitioner has challenged the aforesaid order of conversion before this Hon'ble Court in CWJC No. 13630 of 2002 and the Hon'ble Court after hearing the parties has been pleased to stayed the operation of the order dated 23.10.1987. The aforesaid writ petition was heard along with CWJC No. 7359 of 2002 in batch of cases. The Hon'ble Court has been please to hold that it is quite apparent that the name of the petitioner in all these cases are that their initial appointment were not illegal and also hold that the impugned order with respect to the petitioner/petitioners conversion/revision from the work in charge establishment in the regular scale of pay to daily wages were absolutely unfair, unreasonable, arbitrary and



against the principle of natural justice and violation of Articles 14 16 and 21 of the Constitution of India and disposed of vide order dated 13.07.2007 with the direction to absorbed/Regularise the services of the petitioners under the permanent establishment in the light of the various schemes of the state government concerning such appointment and regularization to consider the case of all the petitioners after giving them opportunity to place there respective claims before the concerned authority.

6. Learned counsel for the petitioner submits that in the light of the aforesaid direction of the Hon'ble Court the petitioner has filed a detailed representation raising his all claims before the competent authority on 18.08.2006.

7. Learned counsel for the petitioner submits that without considering the genuine claim of the petitioner the respondents has absorbed the service in lower post and in lower pay scale in the regular establishment vide memo no. 1002 dated 01.12.2006 and also without computing the last 34 years of satisfactory service of the petitioner. He further submits that the petitioner has filed an application on 01.12.2006 before the competent authority for modification of absorption order and requested them to may kindly pass the appropriate order and



maintained the status of pay scale also, but no action has been taken by the respondents. Then the son of the petitioner has sought an information under the provisions of The Right to Information Act and he has received the information vide letter no. 640 dated 19.05.2011 by which the similarly situated persons have absorbed in service on class III post of work Sarkar with all benefits of the service including the pay scale also (Annexure-9). He further submits that in pursuance to the Finance Department circular number 5074 dated 20.09.1990 the respondents inquired the matter with respect to the petitioner for regularization on class III post on 26.10.2002 the juniors and similarly situated persons enjoying all the benefits like higher pay scale, promotion and other benefits of service with effect from 1991 but the petitioner has been denied the similar benefits.

8. Learned counsel for the petitioner submits that the petitioner seeking parity with one other similarly situated employee of the same department and enforcement of the Bihar Litigation Police, 2011. In fact, one Phudan Prasad Gupta who was also appointed with the petitioner and his post retirement benefits is granted by calculating the total length of service and by providing due promotions on due dates but in the case of the



petitioner the department is taking a different view which is not sustainable in the eye of law.

9. Learned counsel for the petitioner has further relied upon a Full Bench judgment in the case of Amrika Devi and Ors. vs. the State of Bihar and its analogous cases, reported in **2019 (4) PLJR 354** (CWJC No. 10063 of 2012), referring the paragraph nos. 43, 45 and 46 which are quoted hereinbelow;

*“43. With similar refrain, the Supreme Court in **Bhavnagar University Versus Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111]** has observed that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. A passing reference should not be treated as an euclid's formula or ipsissima verba.*

45. It is also required to be noted that the present set of petitions relate to work-charged employees who were appointed after the ban by the State Government in 1984 on the appointment in work-charged establishments. They, therefore, are a different class of employees and even otherwise, they would not be entitled to claim parity with such employees who were appointed prior to such ban having been imposed. The Rules of 2013, referred to above, is clearly applicable to all the employees of the work-charged establishment who were appointed on or before 11.12.1990 and after 22.10.1984. The appointees prior to 22.10.1984, therefore, would not be affected by the Rules of 2013.

46. The reference, thus, is answered in the following terms:

(a) With respect to addition of the number of years of service rendered in work-charged tenure to the service under establishment, regular the for purposes of making the service of such regular employees pensionable, there is practically no



substantial difference in the pronouncements of the two Division Benches in the case of Sheela Devi (supra) and Binod Kumar (supra).

b) For the purposes of pension, only such period from the work-charged tenure would be added for making the service of an employee which has been regularized to qualify him for pension.

(c) While adding such period of work-charged tenure, the modus would be of granting/counting one year for every five years of service rendered under work-charged establishment. If that also leaves some shortfall, then further number of years of work-charged tenure can be taken added for making the service of the pensionable employee

(d) For the purposes of giving benefit to an employee for promotion on the selection grade and time-bound-promotion, the entire period of service rendered as work-charged employee can be counted.

(e) The Rules and Circular of 2013 are valid as has been held in Binod Kumar (supra).

(f) The Rules and Circular of 2013 are applicable to such work-charged employees who have been appointed after 22.10.1984 and prior to 11.12.1990.”

10. Learned counsel for the petitioner submits that in view of the Full Court judgment, the case of the petitioner may again be consider by the department and pay his post retirement benefits after calculating the total length of service and also grant him due promotion on due dates as granted to the similarly situated person, namely, Phudan Prasad Gupta.

11. Learned counsel for the State has filed a detailed counter affidavit stating therein that the petitioner was initially appointed as daily wager Nalkoop Khalasi under Public



Health Division, Purnea vide letter dated 01.10.1972 and thereafter he was appointed as Nalkoop Khalasi under work charge establishment vide memo no. 274 dated 07.04.1973 and he had appointed on the office of Public Health Sub Division, Farbisganj on 10.04.1973. He further submits that while the petitioner was working as Nalkoop Khalasi under work charge establishment vide order no. 87 dated 14.09.1981, the petitioner was posted in Public Health Division, Purnea in work charge establishment. The petitioner was taken into regular establishment in accordance with the government policy contained in memo no. 639 dated 16.03.2006 vide order no. 45 dated 01.12.2006 on the post of Keyman cum Chaukidar upon with he has been working since then and the petitioner retired on 31.01.2014 and he has been paid all retirement benefits in accordance with Finance Department Resolution no. 10710 dated 17.10.2013.

12. Learned counsel for the State further submits that the length of service of the petitioner has been counted as 13 years, 10 months and 13 days and accordingly, it has been taken into account for calculating the pension and gratuity and accordingly all the retiral benefits including the pension and gratuity has been made to the petitioner and the concerned



authority has also no objection with respect to the petitioner and requested the treasury letter no. 637 dated 23.08.2014 for payment of monthly pension/gratuity after receiving authority letter from AG, Bihar, Patna. Apart from that, as per the notification number 10710 of Finance Department, the earned leave of the petitioner was also calculated from 01.12.2006 to 31.01.2014 and accordingly Rs.1,17,519/- only has been paid to the petitioner vide office order no. 16 dated 24.02.2014. He further submits that the petitioner's differences of salary since the year 2002 till absorption from 01.06.2002 to 30.11.2006 has been calculated as per memo no. 925 dated 16.11.2013 and the same as also been paid to the petitioner.

13. Having considered the aforesaid Full Bench judgment (Amrika Devi and Ors. vs. the State of Bihar) (supra), the respondent no. 2 is directed to re-examine the case of the petitioner in light of the aforesaid and take into consideration the Bihar Litigation Policy, 2011 and pass a detail and reason order within a period of 8 weeks' and if the authority finds that the petitioner is entitled the same benefits as of the similarly situated person, namely, Phudan Prasad Gupta then a necessary consequential order should be issued in favour of the petitioner within a period of 10 weeks from the date of production/receipt



of copy of the order.

14. Accordingly, the writ petition stands disposed of with the aforesaid direction.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	23.04.2024
Uploading Date	25.06.2024
Transmission Date	N/A

