

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2299 of 2019

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Devendra Prasad, S/o Late Mahavir Prasad, R/o Village and PO Bihta, PS
Khijarsarai, Distt-Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Minor Water Resource Department, Government Of Bihar, New Secretariat, Bihar, Patna.
3. The Joint Secretary, Government Of Bihar, Minor Water Resources Department, New Secretariat, Bihar, Patna.
4. The Deputy Secretary, Govt. Of Bihar, Minor Water Resources Department, New Secretariat, Bihar, Patna.
5. The Chief Engineer, Minor Water Resources Department, Bhagalpur.
6. The Superintending Engineer, Minor Water Resources Circle, Purnea.
7. The Executive Engineer, Minor Water Resources Division, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Pandit, Advocate
For the Respondent/s : Mr. Pankaj Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-11-2024

Mr. Awadhesh Kumar Pandit, learned Advocate for
the petitioner and Mr. Pankaj Kumar Singh, learned Advocate
for the State.

2. The petitioner is aggrieved by the order No. 198
dated 14.09.2018 issued by the Principal Secretary, Minor Water
Resources Department, Government of Bihar whereby the claim
of the petitioner for regularization in service and further for
granting same wages as granted to the other regular employees
has been rejected, on his application filed in the light of the



order of this Court dated 20.06.2018 passed in CWJC No. 18160 of 2010.

3.The learned Advocate for the petitioner contended that so far the claim of the petitioner for regularization of his service against any of class-iv post is concerned, since the petitioner has already attained the age of superannuation, thus, the same came to be rejected. Nonetheless, the persons junior to the petitioner have been duly absorbed and regularized in the regular services. So far the impugned order to the extent whereby the petitioner has been denied wages as has been granted to other regular employees is concerned, the same is wholly unsustainable and in fact in teeth of the order passed by this Court in CWJC No. 3323/93(R) dated 01.04.1994.

4. Learned Advocate for the petitioner contended that in fact the petitioner was brought under the establishment as a 4th grade employee on daily wage basis in the year 1976 alongwith others. The petitioner was deputed to work as a chowkidar on a sanctioned and vacant post.

5. Muster Roll of chowkidar was prepared under the signature of Executive Engineer, Minor Irrigation Division, Ranchi on 09.10.1980 itself therein, the name of the petitioner figured at serial no. 4. While the petitioner was working under



the establishment on daily wage, some of the persons were taken in the work charge establishment and later on regularized but, so far the petitioner is concerned, he was transferred alongwith other daily wagers from the Minor Irrigation Division Ranchi to the Range office of the Chief Engineer, Bhagalpur.

6. The petitioner on being aggrieved, filed a writ petition before the Ranchi Bench of Patna High Court, as then was, in CWJC No. 3323/93(R). The order of the transfer was stayed on 12.11.1993. The writ petition was finally disposed off vide order dated 01.04.1994 with an observation to make the payment of salary before relieving them in order to join their transferred place. Directions was also issued to the respondents to grant payment of salary on the principle of “equal pay for equal work” like other employees performing the similar work.

7. Learned Advocate for the petitioner also drew the attention of this Court to an identical order passed in writ petition (s) no. 700 of 2009 which was disposed of by the Jharkhand High Court on 04.08.2011 wherein the Court has held that the daily wage earner is entitled to wages equal to the salary at the lowest grade of the employees of his cadre, Water Resources Department in the respondent State Government.

8. It is next contended that irrespective of the fact that the petitioner has served the establishment right from 1976



to 2016 for about forty years, he has been deprived to get the wages equal to the salary of the regular employees of the Water Resources Department as also deprived from the absorption/regularization of his service.

9. On the other hand, the learned Advocate for the State submitted that the petitioner has approached this Court with identical relief in CWJC No. 18160 of 2010 which was disposed off with a direction upon the respondent to consider his claim. Pursuant thereto, the claim of the petitioner was duly considered and it has been found that the petitioner was not appointed by a competent authority as a daily wage worker. It is also contended that in the light of *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1* the claim of the petitioner for regularization has not found favour. Moreover, the petitioner had also attained the age of superannuation and there can't be any retrospective regularization.

10. This Court has heard the learned Advocate for the respective parties and also perused the impugned order. It would be pertinent to observe that so far the claim of the petitioner for regularization is concerned, this Court does not find any error in the impugned order to the extent, his claim for regularization came to be rejected.

11. So far the prayer of the petitioner with regard to



the wages on the doctrine of “equal pay for equal work” is concerned, there is neither any discussion, nor the reason has been assigned as to why the petitioner is not entitled to get the wages similar to the regular employee, who has also been discharging the similar duty.

12. While disposing the CWJC No. 3323/93(R), the learned Ranchi Bench, at the High Court of Judicature at Patna as it then was, has categorically observed that in view of the well settled principles of law as enunciated by the Supreme Court in several decisions, there cannot be any doubt that if the petitioners are discharging similar function as are being performed by the regular employees, the petitioners should be held to be entitled to be paid the same salary as is being paid to the regular employee in terms of Article 39(d) read with Article 14 of the Constitution of India.

13. With the aforementioned observation the Court further directed the Secretary to consider the matter and pass appropriate order in this regard upon verification as to whether the petitioners are performing the same and similar nature of work.

14. This Court has also perused the order passed in identical matter in writ petition (s) 700 of 2009, the copy of which is marked as Annexure 23 to the writ petition wherein the



Court has ruled as follows:-

“In view of the aforesaid decision, the daily wage earner is entitled to wages equal to the salary, at the lowest grade of the employees of his cadre in Water Resources Department in the respondent-State Government. The aforesaid decision has been rendered by a larger Bench of the Hon'ble Supreme Court.

(e) the petitioner is working since last 31 years i.e. more than three decades with the respondents-Government. The petitioner has already been paid as stated hereinabove, looking to the Annexure-7, upto 21" January, 2009, the minimum of the lowest grade of the employees of this cadre.”

15. The State of Jharkhand on being aggrieved has preferred LPA and thereafter taken the matter to the Hon'ble Supreme Court in S.L.A. No. (Civil) 9080 of 2013 which also came to be rejected.

16. Despite the specific direction of the Court as afore-noted, while rejecting the claim of the petitioner there is neither any discussion, nor the reason assigned as to why the petitioner is not entitled for wages equal to the salary atleast at the lowest grade of the cadre in the Water Resources Department which has later on bifurcated into different other departments.

17. In view of the facts noted hereinabove and the observations made by the learned Bench of the Jharkhand High Court, this Court direct the respondent no. 2, the Principal



Secretary, Minor Water Resources Department, Government of Bihar to consider the claim of the petitioner afresh in the light of the observation made by the learned High Court of Jharkhand, which is noted hereinabove and pass a reasoned and appropriate order, preferably within a period of 12 weeks’ from the date of receipt/production of a copy of this order.

18. Suffice it to observe that in case it is found that the petitioner has been discharging similar nature of work, to those of the regular employees of his cadre, the petitioner shall also be accorded the wages equal to the salary at the lowest grade of employees of his cadre.

19. With the aforesaid observation and direction, the writ petition stands disposed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2024
Transmission Date	NA

