

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15941 of 2015

- 1.1. Urmila Devi Wife of Late Chandra Deo Paswan, Resident of village Nagwan, P.S. Naubatpur, District Patna.
- 1.2. Mamta Kumari, Daughter of Late Chandra Deo Paswan, Resident of village Nagwan, P.S. Naubatpur, District Patna.
- 1.3. Ashwini Kumari, Son of Late Chandra Deo Paswan, Resident of village Nagwan, P.S. Naubatpur, District Patna.
- 1.4. Alpana Kumari, Daughter of Late Chandra Deo Paswan, Resident of village Nagwan, P.S. Naubatpur, District Patna.
- 1.5. Rohit Kumar, Son of Late Chandra Deo Paswan, Resident of village Nagwan, P.S. Naubatpur, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Patna Division at Patna.
4. The District Education Officer, Patna.
5. The Headmistress, Project Girls High School Naubatpur (Nagwan), Police Station Naubatpur, District - Patna.
6. Shri Bandhu Paswan, son of late Rama Paswan resident of village - Nagwan, Police Station - Naubatpur, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ram Sagar Singh
For the State	:	Mr. Sitaram Yadav, GP 16
		Mr. Yatindra Narayan, AC to GP 16
For respondent no. 6	:	Mr. Shashinath Jha

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 09-08-2024

During the pendency of this writ petition, the husband of petitioner no. 1.1, the original petitioner, namely, Chandra Deo Paswan (herein after referred to as the 'petitioner'), died on



14.12.2020. I. A. No. 01 of 2021 has been filed by the legal heirs of the petitioner, which was allowed by order, dated 14.09.2023, and the wife and children of the petitioner have been substituted in the present writ application.

2. The instant writ application has been filed for quashing the order, as contained in Memo No. 218P, dated 03.08.2015 (Annexure 1) and the order, as contained in Memo No. 135P, dated 24.03.2011 (Annexure 2), passed by the Director, Secondary Education, Government of Bihar, Patna (respondent no. 2), by which the claim of the petitioner for reinstatement/ recognition of his services as Peon in Project Girls High School, Naubatpur (Nagwan), in the district of Patna has been rejected.

3. The petitioner has also claimed salary from the month of October, 2010, as a Peon and has also challenged the Memo No. 449P, dated 24.06.2008, by which the services of the respondent no. 6 has been recognized and further prayed for quashing Memo No. 97P, dated 21.03.2014, issued by the respondent no. 2, by which the services of the respondent no. 6 has again been recognized with effect from 01.01.1989.

4. The relevant facts involved in the present writ application, as stated by the petitioner, is that the School, in question, was established in the month of January, 1981, which



was taken over as Project School, in the year 1984-85. The petitioner was appointed as a Peon on 02.01.1981 and since then he was working in the School as Peon.

5. The dispute between two sets of teaching and non-teaching employees of the School arose around the year 1991 and the matter was heard by the then Director, Secondary Education, who passed the order, vide Memo No. 43, dated 25.01.1991, holding that the petitioner's appointment was valid and legal; whereas he appointment of respondent no. 6 was fake and ante-dated. The order, dated 25.01.1991, was assailed before this Court by the Managing Committee of the School, in CWJC No. 1160 of 1991, which was dismissed by a Division bench of this Court, vide order, dated 30.07.1991, holding that there is no error in the impugned order, dated 25.01.1991.

6. A guideline was issued by the Human Resources Development Department, Government of Bihar, for recognition of the services and payment of salary to the teaching and non-teaching staff of Second Phase Project Schools and in terms of the said guideline, the project report of the School was sent to the Director, Secondary Education, through proper channel, and screening of the School was done in the year 1992. Upon recommendation of the Screening Committee, the services of two



teachers and one Peon was recognized, vide Memo No. 677, dated 12.09.1993. The petitioner's service was not recognized by the said order and the appointment of one Birendra Prasad was recognized.

7. The petitioner, thereafter, inquired into the matter and learnt that he was denied of his approval of services, assigning the reason that he was underage at the time of appointment. In the circumstances, the petitioner filed a writ application, bearing CWJC No. 10209 of 1995, seeking approval/recognition of his services and payment of salary. The writ petition was disposed on 15.11.1996, with a direction to the respondents to pass a final order within a period of one month in terms of the Circular No. 142, dated 04.02.1989. When the order, dated 15.11.1996, was not complied, the petitioner filed a contempt petition, bearing MJC No. 1057 of 1997 and after filing of the contempt petition, the petitioner's services was recognized, vide Memo No. 682, dated 16.09.1997, with effect from 01.01.1989 and salary was also paid to him with effect from 01.01.1989.

8. By order, issued under Memo No. 482, dated 04.11.1995, the Director, Secondary Education, held the appointment of respondent no. 6 and one Sri Onkar Nath (Clerk)



as forged, but vide impugned orders, the services of respondent no. 6 and Sri Onkar Nath have been recognized.

9. Learned Counsel for the petitioner argued that the impugned orders are contrary to several orders/decisions passed by this Court, including the order, dated 15.11.1996, passed in CWJC No. 10209 of 1995. The services of the petitioner was recognized way back on 16.09.1997 with effect from 01.01.1989, in terms of the order, dated 15.11.1996, passed in CWJC No. 10209 of 1995, but after a long time, all of a sudden, the recognition of the services of the petitioner has been cancelled, vide impugned order, dated 24.03.2011.

10. The petitioner challenged the order, dated 24.03.2011, in CWJC No. 6063 of 2011, which was disposed on 13.05.2014, with a direction to the Director, Secondary Education, to pass a reasoned order in light of the order passed in CWJC No. 19930 of 2012. The order passed in CWJC No. 19930 of 2012 is squarely covered, but the respondent no. 2 passed the order under challenge, dated 03.08.2015.

11. In violation of the order, passed in CWJC No. 19930 of 2012, the case of the petitioner has been rejected on the ground that the petitioner was underage at the time of his initial appointment by the Managing Committee of the School. Several



identical matters relating to underage at the time of appointment has been allowed by this Court, but the respondent no. 2, while passing the impugned orders, have violated the said orders, by which the petitioner's case is squarely covered.

12. The respondents have twisted the fact and in order to favour respondent no. 6, recognized the services of the respondent no. 6 by order, dated 24.06.2008 (Annexure 3), though on 24.06.2008, there was no vacant post of Peon in the School as the petitioner was already working in the School as Peon. In order to accommodate respondent no. 6 and to pay the salary to him, the recognition of the petitioner's service has been cancelled vide the impugned order, dated 24.03.2011.

13. It is not a case of fresh recognition of the services of the petitioner, but in fact his services was already recognized way back in the year 1997. The appointment of respondent no. 6 was declared illegal, vide Memo No. 43, dated 25.01.1995, passed by the respondent no. 2 and subsequently, the claim of respondent no. 6 for recognition of his services was rejected by respondent no. 2, vide Memo No. 482, dated 04.11.1995, stating therein that his appointment was illegal as he was regular student of Intermediate in 1985-87 session from Rajkiya Tribhuwan high School, Naubatpur, at the time of his appointment, which is not



permissible and wholly illegal, but ignoring these crucial facts, the services of respondent no. 6 has been recognized after cancelling the recognition of the petitioner's services.

13. Per contra, learned Counsel for the respondent no. 6 and the State argued that at the time of appointment, the petitioner was underage. The respondent no. 6 was appointed on 05.02.1985 and his services was recognized on 24.06.2008 with effect from 01.01.1989. There were only two sanctioned posts available for the post of Peon, upon which one Birendra Prasad was already working and on the second post, the services of respondent no. 6 was recognized. There was no vacant post available for appointment of the petitioner as the petitioner was underage at the time of his initial appointment.

14. On the direction of the Supreme Court, a Three-men Committee was constituted and the Committee recommended that the petitioner was below 18 years of age. On the basis of the report of the Three-men Committee, dated 12.02.2007, the respondent no. 2 cancelled the recognition of the services of the petitioner.

15. Learned Counsel relied upon paragraph 90, in the case of **State of Bihar and Others v. Project Uchcha Vidyalaya Shikshak Sangh and Others**, reported in **(2006) 2 SCC 545**,



which says, *“As regards minimum age of the teaching and non-teaching staff, indisputably the same should be 18 years”*.

16. Upon hearing the parties and upon going through the materials on record, it transpires that the petitioner's services were recognized vide Memo No. 682, dated 16.09.1997, with effect from 01.01.1989 and salary was also paid to him with effect from 01.01.1989 without any hindrance. The controversy arose regarding the petitioner being underage at the time of his appointment in the School run by the Managing Committee in the year 1981 for the first time in the year 2008 when the services of respondent no. 6 as a Peon was recognized vide order, dated 24.06.2008 with effect from 01.01.1989. As on 24.06.2008, the petitioner was continuing as a Peon in the Project School and was getting salary. The petitioner, admittedly, got the salary till September, 2010.

17. Insofar as the petitioner, being underage on the date of initial appointment in the School on 02.01.1981 is concerned, as per the case of the respondents, he was 16 years 07 months old.

18. In CWJC No. 10397 of 1992 and other analogous cases, this Court has observed that if a person is underage for a few months or one or two years, that cannot be a ground for



rejection for the purposes of absorption/recognition of service in the State Government.

19. The petitioner filed CWJC No. 10209 of 1995 for recognition of his services as a Peon and for payment of salary, in which this Court held that in the present case, the petitioner, though it can be said that at the time of his initial appointment in the year 1981, he was underage, the said appointment cannot be termed as illegal, but it can be said to be irregular, as after efflux of time, the petitioner can be appointed. If the appointment is irregular, on efflux of time, such a person accrues the qualification as in the present case, his appointment automatically becomes regular. Such being the position, though the petitioner's appointment may be irregular, at the time of his initial appointment under the private school, the same automatically becomes regular after attaining the age of 18 years on efflux of time. The Court further observed that however, the State Government in any case is not going to absorb the petitioner from 01.01.1981; rather, they will consider the case of the petitioner for his absorption/regularization with effect from 01.01.1989 in terms of Circular No. 142, dated 04.02.1989. Such being the position, the petitioner being underage on 01.01.1981, his case cannot be rejected in light of the aforesaid finding, this Court directed the respondents to rec



consider the claim of the petitioner for absorption/regularization in terms of Circular No. 142, dated 04.02.1989 and pass a final order within a period of one month.

20. In the light of the aforesaid order, the respondent recognized the services of the petitioner by order, dated 16.09.1997 with effect from 01.01.1989.

21. In CWJC No. 19930 of 2012, filed by similarly situated person, namely, Rekha Kumari, by which the claim for recognition and payment of salary was rejected only on the ground that she, at time of appointment was under age in the Project Girls High School, a co-ordinate Bench of this Court, taking note of decision in the case of **Project Uchcha Vidyalaya Shikshak Sangh** (supra) and various other decisions of this Court, allowed the writ application after arriving at the conclusion that teaching and non-teaching employees of the Project School have been paid salary since 1989 and it would be a travesty of justice that her service will not be recognized by the respondent as admittedly, in the year 1989, the petitioner was major. The Court further held that the entry of the petitioner in service will be treated at the age of 18 years on the day of her appointment.

22. The petitioner challenged the order passed on 24.03.2011, in CWJC No. 6063 of 2011, which was disposed on



13.05.2014, with a direction that *“It goes without saying that if the order as relied upon by the petitioner squarely covers the case of petitioner passed in CWJC No. 19930 of 2012, the petitioner will be given the relief in the light of that order”*.

23. The impugned order, dated 03.08.2015 has been passed by the respondents in light of the order, dated 13.05.2014, passed in CWJC No. 6063 of 2011. It has been argued by learned Counsel for the petitioner that the issue regarding appointment of underage employees by the Private Managing Committee came before this Court and vide various orders, this Court has held that it is irregular and not illegal and allowed the writ application on the ground that at the time of taking over the School as Project School in the year 1984-85, the employee was major and in any case payment of salary was started with effect from 01.01.1989.

24. Coming to the facts of the present case, the petitioner was appointed by the Managing Committee of the School in the year 1981 and indisputably, the age of the petitioner was 16 years 07 months. The School was taken over in the year 1984-85. The petitioner, at best, attained majority sometime in the year 1983. As such, as on the date of taking over, the petitioner was major.



25. In a writ application filed by the petitioner seeking recognition of his services, bearing CWJC No. 10209 of 1995, a Bench of this Court directed the respondents to reconsider the case of the petitioner in light of observation of this Court that the petitioner's appointment may be irregular at the time of his initial appointment under the School, but the same automatically becomes regular after attaining the age of 18 years on efflux of time. The respondent authorities, falling the judgment, recognizes the services of the petitioner by order, dated 16.09.1997. Again, when the services of the petitioner was derecognized in the year 2011, the petitioner approached this Court in CWJC No. 6063 of 2011, which was disposed with a direction to the respondents to consider the representation of the petitioner in light of the order passed by this Court in CWJC No. 19930 of 2012 and other analogous cases.

26. Once, in the light of the order of this Court, the services of the petitioner has been recognized in the year 1997 and the petitioner started getting salary with effect from 01.01.1989, it is arbitrary on the part of the respondent authorities to recognize the services of the respondent no. 6 by order, dated 24.06.2008, while the petitioner was already working on the post of Peon in the year 2008. The issue regarding underage has been decided and



dealt with by this Court in a writ application filed by the petitioner and other similarly situated persons, as such in all fairness, the issue should put at rest now.

27. I find force in the argument of learned Counsel for the petitioner that the authorities were facing difficulty in making payment of salary to the respondent no. 6 pursuant to recognition of his services in the year 2008 as the petitioner was already working for a long period. Accordingly, the recognition of the petitioner was cancelled in the year 2011.

28. The cancellation of recognition of the petitioner's services after a long time on the ground of underage, which was set at rest by this Court in a writ application filed by the petitioner and other analogous cases, is arbitrary, unreasonable, unfair, inequitable and accordingly is unsustainable in law.

29. Considering the aforesaid discussion and the fact that the petitioner had worked for a long period of time as a Peon and was being paid salary with effect from 01.01.1989, the cancellation of the recognition of the petitioner's services by the impugned orders is fit to be set aside.

30. Accordingly, the orders, as contained in Memo No. 218P, dated 03.08.20215 (Annexure 1) and Memo No. 135P, dated



24.03.2011 (Annexure 2), passed by the Director, Secondary Education, Government of Bihar, Patna, are set aside.

31. The respondents are directed to pay the salary of the petitioner from October, 2010 till the date of his death (14.12.2020) in favour of the substituted legal heirs within a period of three months from the date of receipt/production of a copy of this order.

32. The services of the petitioner for the aforesaid period shall be calculated for the purpose of payment of pensionary and other monetary benefits.

33. Since after the death of the petitioner in the year 2020, the post becomes vacant. Thus, this Court is not interfering with the services of the respondent no. 6.

34. In the result, this writ application is allowed to the extent indicated above.

35. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	15-07-2024
Uploading Date	09-08-2024
Transmission Date	N/A

