

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6191 of 2018

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Upendra Prasad Singh S/o late Ayodhya Prasad Singh R/o house no. 71, Road
No. 14, Sri Krishna Nagar, Pulwari, P.S. Buddha Colony, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
3. The Additional Secretary, Building Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
4. The Joint Secretary, Building Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
5. The Deputy Secretary, Building Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 28-02-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The learned counsel for the petitioner has filed the present writ petition with a limited prayer that to shift his date of regularization from the date of his ad hoc appointment with effect from 29.10.1988 and not from 31.01.2015 which has been issued vide notification contained in Memo No.8943 dated 12.09.2016 which has been challenged by the present petitioner.



3. Learned counsel for the petitioner in support of his claim submits that the petitioner was duly appointed as adhoc Junior Engineer against the sanctioned vacant post of Junior Engineer in the Education Department by the competent authority on 26.08.1983 and since then he continuously discharged his duty to the full satisfaction of the department. The notification of appointment is annexed as Annexure-2. Counsel for the petitioner submits that in the year 1987, the Government of Bihar has enacted a law, namely, the Bihar Gazetted Officers Adhoc Appointments Regulation Act, 1987 (Act No.4 of 1987). Counsel submits that the said act has been enacted with special purpose that is to regularize the adhoc appointments made on the gazetted post by the State Government. Counsel further submits that the entire copy of the act he has annexed as Annexure-5, whose Section 3(2) is in support of the petitioner, that those persons who have been appointed prior to 30th of June, 1986 and are continuing in service are regularized and their appointment shall be deemed to be made on regular basis with effect from the date of their appointment. Counsel submits that in the light of this statute Act No.4 of 1987, the petitioner is entitled to be regularized with effect from 29.10.1988 instead of 31.01.2015 as notified by



the respondent in notification contained in Memo No.8943 dated 12.09.2016.

4. Learned counsel for the State, on the other hand, submits that the writ petition is not maintainable due to the reason that petitioner has earlier moved before this Court in CWJC No.8909 of 2014 which was decided on 20.09.2016 and thereafter he preferred LPA No.2061 of 2016 in which the notification which has been challenged before this Court in the present writ has already been considered and no relief was granted to him. Hence, in this view of the matter, the petitioner is not entitled for any relief.

5. Upon perusal of the orders passed by this Court in CWJC No.8909 of 2014 and LPA No.2061 of 2016, it transpires to this Court that the LPA was disposed of with clarification that petitioner would be at liberty to assail the said notification contained in Memo No.8943 dated 12.09.2016 before a competent forum.

6. The submission of the counsel for the petitioner in this regard is that earlier petitioner has moved in the writ petition for regularization of his services. By the said notification, the regularization was made. In the present writ petition he has only grievances to shift the date of his



regularization and, therefore, in this view of the matter the contention of the State is not acceptable at all that present writ petition is not maintainable, because in view of this Court the cause of action of earlier writ and LPA are different from the cause of action mentioned in the present writ.

7. With a view to decide this matter, it is necessary to quote the extract of Section 3 of Bihar Act 4, 1987, which states as follows:

“3. Regularisation of the ad-hoc appointments. - (1) All ad-hoc appointments made by direct recruitment to any of the gazetted posts by the State Government which were continuing on such ad-hoc temporary basis upto the 30th June, 1986 are excluded from the purview of the Commission regarding any of the matters mentioned in sub-clauses (a) and (b) of clause (3) of Article 320 of the Constitution of India.

(2) Notwithstanding any judgment, decree, order, direction, writ and prohibition issued by any Court or Tribunal against ad-hoc appointment of gazetted officer, the services of all gazetted officers appointed on ad-hoc temporary basis up to the 30th June



1986 and are continuing in service are regularised and their appointments shall be deemed to be made on regular basis with effect from the dates of their appointments.”

8. After going through this section, it is crystal clear that regularization of adhoc appointments has to be made with effect from the date of their appointment on gazetted post and from Annexure-2 it transpires to this Court the date of such appointment is 29.10.1988 and, therefore, the decision of the respondent that his services shall be regularized with effect from 30.01.2015 is absolutely in violation of the statute and, therefore, this writ petition is hereby allowed directing the respondents to issue a fresh notification for the petitioner granting regularization from the date of his appointment i.e., 29.10.1988. This notification shall be issued by respondent No.2 within 90 days from the date of receipt/production of a copy of this order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2024
Transmission Date	NA

