

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19770 of 2012

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Rameshwar Singh S/o Late Indradev Singh R/V- Birchhapra, P.O.+ P.S.- Pipra
Kothi, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary to Govt. Public Health Engineering Department, Bihar, Patna, Bisheshwaraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer (Mechanical) PHED, Bihar, Patna, Bisheshariya Bhawan, Bailey Road, Patna
3. The Executive Engineer, Public Health Division, Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate.
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-05-2024

Heard Mr. Lalan Kumar Singh, learned counsel
appearing on behalf of the petitioner.

2. The petitioner has sought for the following
reliefs as prayed for in para-1 of the writ petition, which are,
inter alia, reproduced hereinafter:

“That by this writ application, the petitioner challenges disputes, the legality and validity of the order contained in Memo No. 377 dated 27.05.2008 passed by the Executive Engineer, Public Health Division, Siwan, whereby and whereunder service of the petitioner has been converted from Permanent Establishment to daily wage, without any show cause which is wholly illegal, arbitrary, malafide, unreasonable and contrary to the facts as well as law, although the similarly situated and Junior persons, have been absorbed in Regular Establishment in place of the petitioner by committing naked partison and exercised the power on the basis of by Pick and Choose method and bargain with the petitioner.”

3. Brief facts of the case are that the petitioner was



engaged as daily wager on sanctioned vacant post of Khalasi, a Grade IV post, for which the existing pay scale was Rs. 2550-3200 and his services were absorbed in the Regular Establishment vide order dated 01.12.2006 contained in Memo No. 656 in light of the order dated 28.11.2006 contained in Memo No. 1126 passed by the Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar. Learned counsel submits that without issuing any show cause notice or affording opportunity of hearing to the petitioner, the Executive Engineer, Public Health Division, Siwan vide order dated 27.05.2008 contained in Memo No. 377 converted the service of the petitioner from permanent establishment to daily wage.

4. Learned counsel next submitted that the petitioner once having been absorbed in Regular Establishment and having attained a permanent status of government employee, he cannot be denied the said status. The order dated 27.05.2008 contained in Memo No. 377 passed by the Executive Engineer, PH Division, Siwan cannot be sustained in the eye of law to be contrary to the decision taken by the three men committee constituted in light of the 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 has further relied on the judgment dated 03.01.2023 passed in L.P.A. No. 1140 of 2018, arising out of C.W.J.C. No. 2181 of 2013, wherein the Division Bench has rejected the Letters Patent Appeal in light of the judgment rendered in the case of **Uma Devi (supra)**. Similarly, the petitioner after having been absorbed in permanent establishment cannot be reverted back to the original status as daily wager. Learned counsel submitted that without issuing any show cause or affording opportunity of hearing to the petitioner, the petitioner was reverted back from permanent establishment to daily wager by the Executive Engineer, Public Health Division, Siwan vide order dated 27.05.2008 contained in Memo No. 377 (Annexure-5). Learned counsel, in these background, seeks to file a detailed representation before the authority concerned.

5. No one appears on behalf of the State.

6. I have perused the counter affidavit filed on behalf of respondent nos. 1 to 4 in which it has been stated in Para-6 that the Executive Engineer had issued Office Order No. 40 dated 27.08.2008 that the petitioner along with two others were adjusted on the post of Khalasi in regular establishment vide office order no. 62 dated 01.12.2006, as contained in



Annexure-3 to the writ petition in light of the order dated 24.03.2008 contained in Memo No. 219. Pursuant to the order dated 01.05.2010 passed by this Court, the case of the petitioner was not found to be in accordance with law and he was retrenched in view of the Resolution No. 639 dated 16.03.2006 issued by the Administrative Reforms Department, Government of Bihar. Vide order dated 28.06.2002 contained in Letter No. 3900, the petitioner had been terminated. In Para-14 of the counter affidavit, it has been informed that the petitioner had not produced any paper for his being absorbed in regular establishment. It is further stated in Para-16 of the counter affidavit that the daily wagers employees and the employees working in work charge establishment having been appointed without following due process of law and the constitutional mandate of Articles 14 and 16 were considered as illegal appointees and thus, the petitioner was reverted from work charge to daily wager in the year 2002. The cases of the reverted/retrenched employees including the petitioner were examined in light of the directions issued by the Apex Court in the case of **Uma Devi (supra)**, which is applicable in respect of the employees who were working in permanent establishment and not in work charge establishment.



7. I find that there is no specific denial in the counter affidavit that the petitioner was not taken in regular establishment on 01.12.2006 as per the recommendation of the three men committee constituted in light of the direction of the Apex Court in the case of **Uma Devi (supra)**. It has also not been denied that no work was taken from the petitioner at any point of time. It is also not the case of the respondent that the petitioner had not worked in work charge establishment. The petitioner has made out a case of discrimination claiming that the persons junior to him, who were appointed in the year 1989 and were working as work charge employee, have been regularized on Class-IV post vide Memo No. 656 dated 01.12.2006 considering their period served by them and have been taken in regular establishment and the petitioner who was appointed in the year 1985, being similarly situated, is also entitled for similar relief.

8. Considering the aforesaid fact, it can be said that the respondent have treated the petitioner against principle of equity. The order dated 27.05.2008 contained in Memo No. 377 is not only bad, but is also against the law laid down by the Apex Court in the case of **Uma Devi (supra)**, is hereby set aside and quashed.



9. The petitioner, if so advised, may file a detailed representation before the Executive Engineer, Public Health Division, Siwan who is directed to consider the case of the petitioner giving him permanent status on the basis of his service particulars, and similarly situated persons in light of the decision of the Apex Court and the order passed by this Court in C.W.J.C. No. 706 of 2002 and analogous cases. As a result of absorption, the petitioner will be also entitled to back salary and other consequential benefits to which the petitioner is entitled for. It has also been informed that the petitioner has already superannuated in September, 2023, which entitles him to claim pensionary benefits and pension is also required to be calculated in accordance with law.

10. The writ application stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.05.2024
Transmission Date	N.A.

