

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5462 of 2022

- 1.1. Madhusudan Jha Son of Late Balbhadra Jha Resident of Village - Kataria, via Naugachia, P.S. - Kursela, District- Katihar.
2. Daya Kant Jha Son of Late Bidyadhar Jha, resident of Bhimnagar, P.S. - Birpur, District - Supaul, presently residing at village - Kajuraha, via - Mangwar, P.S.- Sonebarsa Raj, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Bihar, Sinchai Bhawan, Patna.
2. The Under Secretary, Water Resources Department, Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Flood Control and Drainage, Birpur, District - Supaul.
4. The Superintending Engineer, Barrage Circle, Birpur, District - Supaul.
5. The Executive Engineer, Eastern Koshi Embankment Division no. 2, Birpur, District - Supaul.
6. The Executive Engineer, Head Works Division, Birpur, District - Supaul.
7. The Treasury Officer, Katihar.
8. The Treasury Officer, Saharsa.
9. The Accountant General (A and E), Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Adv.
For the Respondent/s	:	Mr. Kunal Tiwari, AC to GA-2
For the AG, Bihar	:	Mr. Ram Yash Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 24-07-2025

Heard the parties.

2. The original petitioner no. 1 was the widow, whose husband along with the petitioner no. 2 retired from the reverted post of Work Sarkar (Kaaryadarshak); subsequently husband of the original petitioner no. 1 died. Both the



petitioners invoked the prerogative writ jurisdiction of this Court seeking a direction upon the respondents to revise pension, death-cum-retirement gratuity and leave encashment of the petitioners, after restoring their promotion on the post of Supervisor Grade-II, which was cancelled in terms with the order dated 08.05.1997 passed in CWJC No. 2524 of 1996 as well as the subsequent office order dated 11.12.1997, issued under signature of Under Secretary, Water Resources Department, Bihar, Patna.

3. Before proceeding further, it would be pertinent to note that during the pendency of the writ petition, the petitioner no. 1 died on 25.02.2025 leaving behind her legal heirs as disclosed in the interlocutory application bearing I.A. No. 03 of 2025. In pursuant to the direction, now the son of the petitioner no. 1 stood substituted, who has been pursuing the present writ petition.

4. Having heard the learned Advocate for the respective parties, this Court finds that the present case is nothing but a State created litigation, the concerned respondents are bent upon to any how take hold of and deprive the erstwhile employee from their entitlement. The issue as has been raised and culled out from the materials



available on record is in narrow compass, as to whether, when the order cancelling the promotion of the erstwhile employees was held to be unsustainable by the learned Division Bench of this Court and even the challenge to order of the Division Bench before the Hon'ble Apex Court failed, can the erstwhile employees/petitioners be deprived from their rightful entitlement and the reliefs prayed for in the writ petition.

5. The husband of the original petitioner no. 1 was appointed in the year 1958 as Work Sarkar under the work charge establishment of Koshi Project and on being found eligible, was promoted to the post of Supervisor Grade-II on 01.04.1981. Likewise, the petitioner no. 2 was appointed on 15.11.1973 as Work Sarkar under the work charge establishment and later on, he was promoted on the post of Supervisor Grade-II vide Letter No. 2744 dated 22.07.1991.

6. Both the husband of the petitioner no. 1 and the petitioner no. 2, thereafter, were brought to regular establishment with effect from 01.04.1977. In the meanwhile, the Department of Water Resources vide Memo No. 1160 dated 16.07.1994 issued direction to all the Chief Engineers as well as other Officials to take steps for cancellation of the promotion of those work charge employees, who were



illegally promoted. It has further been directed that the promoted work charge employees will be brought in regular establishment on the same post with further clarification that they shall be only entitled for time bound promotion and in no circumstances, they can be promoted under the work charge establishment.

7. In pursuant to the letter aforementioned, the Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna vide its Letter No. 6267 dated 22.12.1995 had directed all the Chief Engineers and the Officials to ensure the compliance of the said letter. The letter, above mentioned, led to cancellation of the promotion of the husband of the petitioner no. 1 and petitioner no. 2, who had also been promoted to the post of Supervisor Grade-II vide Letter No. 3933 dated 31.12.1996, in the light of the Letter No. 6267 dated 22.12.1995 and they had been reverted to their initial post of Work Sarkar.

8. Aggrieved, the husband of the petitioner no. 1 and petitioner no. 2 along with other affected employees preferred CWJC No. 2524 of 1996, which stood dismissed vide order dated 08.05.1997 with only respite that the respondent authorities shall not make any recovery from the employees.



The order passed by the learned Single Judge was put to challenge in LPA No. 836 of 1997 and the learned Division Bench vide order dated 18.12.2006 while setting-aside the order of the learned Single Judge passed in CWJC No. 2524 of 1996 had also set-aside the Letter No. 1160 dated 16.07.1994.

9. Despite the order of the learned Single Judge stood set-aside by learned Division Bench of this Court as also the genesis of the order leading to cancellation of the promotion of the erstwhile employee contained in Letter No. 1160 dated 16.07.1994 stood cancelled, the claim of the petitioners and other identically situated persons were resisted by the State respondents on account of the SLP preferred by the State. However, finally the SLP converted in Civil Appeal No. 783 of 2011, Civil Appeal No. 782 of 2011 and Civil Appeal No. 9636 of 2011, all came to be dismissed by the Hon'ble Supreme Court of India on being found no ground to interfere in the impugned order having regard to the long period that has lapsed after the respondents were given the benefit.

10. The petitioners, upon finding the challenge to the order of the learned Division Bench, held unsustainable by



the Hon'ble Apex Court on 19th July, 2017 approached the Chief Engineer, Water Resources Department for restoration of their promotion with effect from the date when it was granted and accordingly, ensure all the benefits including the family pension/pension and other dues. Notwithstanding the aforesaid facts and the representation filed by the petitioners, when nothing was done the petitioners approached this Court.

11. It is surprising to this Court that despite the issue coming to be settled up to the Apex Court on account of the order of the learned Single Judge stood set-aside by the learned Division Bench and got its affirmance up to the Hon'ble Supreme Court, the claim of the petitioners have been resisted on a very flimsy and technical ground that at no point of time, the order contained in Memo No. 6267 dated 22.12.1995, whereby the services of the husband of the petitioner no. 1 and petitioner no. 2 were reverted after cancelling their promotion have been set-aside by the learned Division Bench of this Court. The resistance made by the concerned respondents compelled the petitioners to challenge the office order dated 22.12.1995 contained in Memo No. 6267 as well as Letter No. 3933 dated 31.12.1996 by filing an interlocutory application bearing I.A. No. 01 of 2024.



12. There is no iota of confusion that the consequential order, as noted hereinabove, which are assailed in the I.A. No. 01 of 2024 were issued in consequence to the Letter No. 1160 dated 16.07.1994. This letter was the subject matter of CWJC No. 2524 of 1996 preferred by the husband of the petitioner no. 1 and petitioner no. 2 along with other identically situated persons. However, the learned Single Judge did not interfere in the matter and sustain the order, reverting the petitioners to their initial post, after cancelling their promotion. The order dated 08.05.1996 passed in CWJC No. 2524 of 1996 was questioned in LPA No. 836 of 1997 and finally the learned Division Bench while setting-aside the order of the learned Single Judge quashed the order dated 16.07.1994 by holding as follows:-

“In view of the said notification published on 26th April, 1950 the revised condition service of work charge establishment as decided by the Government on 4th February, 1949 became legislative service rules pertaining to the employees of the work charge establishment of the Government. As a result of such decision of the Government, which has not yet been cancelled or repealed by any enactment made by the legislation of the State, an employee working in the work charge establishment for a period of more than one year is deemed to have become a member of the permanent establishment of the State



Government.

In the writ petitions, dealt with under the impugned judgments, it was not in dispute that the petitioners therein worked for more than one year in the same post in the work charge establishment before being promoted to the post of Clerk/Assistant. It was not the contention in the impugned orders, as were challenged in the writ petitions, nor it was the contention in the writ petitions or before us that majdoors, i.e. class IV employees, cannot be promoted to the post of clerk/Assistant belonging to Class III by virtue of any decision of the Government. In view of the decision of the Government referred to above each of the writ petitioners became a permanent Government employee immediately on completion of one year from joining as majdoor in the work charge establishment. Since then they became by fiction of a law, employees of the permanent establishment, although as majdoors, i.e. Class IV employees. There, therefore, appears to be no just reason for holding out in the orders impugned in the writ petitions that promotions granted to the petitioners were inappropriate.”

13. Admittedly, the challenge to the decision rendered by the learned Division Bench, as discussed hereinabove, failed before the Hon’ble Supreme Court in Civil Appeal No. 782 of 2011 and other analogous cases. In pursuant to the order of the learned Division Bench duly affirmed by the Hon’ble Supreme Court, other identically situated persons have been reverted to their promotional post



with all the benefits, including Late Punyadeo Thakur vide office order contained in Memo No. 110 dated 11.01.2018. However, no similar relief has been extended to the husband of the petitioner no. 1 and the petitioner no. 2 without there being any justifiable reason.

14. In view of the aforementioned admitted position, once the very genesis of the consequential order being Letter No. 1160 dated 16.07.1994 stood quashed and cancelled by the learned Division Bench of this Court, the consequential order automatically lost their force. It is trite, when foundational infrastructure collapses, the superstructure is bound to collapse. Hence, in the opinion of this Court, the resistance to the claim of the petitioners on account of the consequential order being not set-aside by the learned Division Bench is wholly arbitrary, whimsical and not sustainable in the law as well as on facts; however, in order to give quietus to the litigation, this Court in view of the discussions made hereinabove, hereby quashed and cancelled the consequential order dated 22.12.1995 contained in Memo No. 6267 as also the Letter bearing no. 3933 dated 31.12.1996, so far it relates to the petitioners/erstwhile employee.



15. The respondent Chief Engineer, Water Resources Department, Flood Control and Drainage, Birpur, District-Supaul is hereby directed to consider the case of the erstwhile employees/petitioners afresh in the light of the discussions made hereinabove and take appropriate decision, in accordance with law, and extend all the similar benefits as has been granted to identically situated person especially, Late Punyadeo Thakur and others with a litigation cost of Rs. 10,000 to each of the petitioners. The entire exercise must be completed preferably within a period of twelve weeks, from the date of receipt/production of a copy of this order.

16. The writ petition stands allowed.

17. Pending application(s), if any, also stands disposed off.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2025
Transmission Date	NA

