

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16357 of 2013

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Awadhesh Kumar S/O Late Bhubneshwar Rai Resident of Village-
Damodarpur Dumri, P.S- Kurhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. Engineer In Chief cum Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. Chief Engineer, Public Health Engineering Department, Govt. of Bihar, Patna.
4. Superintendent Engineer, Public Health Mechanical Circle, Muzaffarpur
5. Executive Engineer, Public Health Mechanical Division, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar, Advocate
		Ms. Sweta Burnwal, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3
		Ms. Divya Verma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

Date : 08-10-2025

Heard Mr. Shiv Kumar, learned counsel for the petitioner and Mr. P.K.Verma, learned Additional Advocate General-3 for the State of Bihar.

2. The petitioner has filed the instant application for quashing the order dated 8.10.2012 passed by the Principal Secretary, Public Health Engineering Department (PHED), Government of Bihar whereby as a result of lack of available post, the prayer of the petitioner for absorption/regularisation of



his service on the post of Electrician was rejected. It has been prayed that the respondents be directed to absorb/regularise the service of the petitioner on the post of Electrician w.e.f. 30.11.2006 and to give benefit of Assured Career Progression (ACP) scheme to the petitioner as has been given to similarly situated persons including those junior to him.

3. The case of the petitioner in brief is that he was appointed on 1.6.1980 as a daily wage worker in the PHED on the post of Pump Operator. By order dated 14.3.1988, he was absorbed under the work charge establishment w.e.f. 13.1.1988. Pursuant to the decision taken by the Establishment Committee in its meeting held on 17.12.1996, the petitioner was appointed as Electrician and posted in the Public Health Mechanical Sub Division, Pupri in the district of Sitamarhi.

4. It is further case of the petitioner that he was served with a show cause notice dated 13.4.2002 asking him as to why he not be reverted back as a daily wage worker from work charge establishment. The petitioner moved the Patna High Court against the said notice in CWJC no.6370 of 2002 wherein this Court was pleased to pass an interim order dated 22.5.2002 directing the respondents to file their counter affidavit and further ordered that in the meantime, no coercive action



shall be taken against the petitioner.

5. It is further case of the petitioner that inspite of the interim order of this Court dated 22.5.2002, the respondents came out with an order dated 22.8.2002 reverting the petitioner as daily wage worker w.e.f. 1.6.2002.

6. It is the case of the petitioner that in response to a letter from the department, the Executive Engineer, Public Health Mechanical Division, Muzaffarpur furnished details of altogether 130 persons, the list having been brought on record as Annexure-6 to the writ application. While the name of the petitioner figures at Sl. no.45, the name of Hari Kumar Patel is at Sl. no.66.

7. By order dated 30.11.2006, issued under the signature of the Executive Engineer, PHED, Muzaffarpur, the petitioner was absorbed/regularised on the post of Pump Operator in the pay scale of Rs.2,650-4,000, however, a perusal of the said letter would show that it was specifically mentioned therein that the petitioner would continue to perform his work which he had been performing till then.

8. It is the case of the petitioner that he had been performing the work of an Electrician and thus having wrongly been regularised on the post of Pump Operator, the petitioner



moved this Court in CWJC no.6004 of 2007 which was disposed of by order dated 20.12.2011 directing the Chief Engineer, PHED, Patna to consider the case of the petitioner in light of the submission made by the learned Additional Advocate General-II before the Division Bench on 10.5.2006. Pursuant to the aforesaid direction of this Court contained in order dated 20.12.2011, the respondents considered the case of the petitioner and by the impugned order dated 8.10.2012 rejected the prayer of the petitioner for his absorption on the post of Electrician for the reason of non-availability of post. It is against this order that the instant writ application has been preferred.

9. It is submitted by learned counsel appearing for the petitioner that ever since his appointment in the year 1980, the petitioner has been performing the duty of an Electrician which would also be evident from the order dated 31.12.1996 taken out pursuant to the meeting of the Establishment Committee held on 17.12.1996. It is further submitted that though the respondents came out with an order dated 13.4.2002 asking the petitioner to show cause as to why he be not reverted back from work charge establishment to daily wage, however, by order dated 22.5.2002 (in CWJC no.6370 of 2002) itself, this



Court granted interim relief in the petitioner's favour directing that no coercive action shall be taken against him. Further, referring to the order dated 30.11.2006, it is submitted that though the petitioner was shown to have been absorbed on the post of Pump Operator, however, taking into consideration that all along the petitioner has been working as an Electrician, it was specifically mentioned therein that the petitioner would continue to discharge work as before ie that of an Electrician.

10. Learned counsel for the petitioner submitted that on the petitioner challenging his order of absorption on the post of Pump Operator, in CWJC no.6004 of 2007, this Court was also of the opinion that the case of the petitioner for regularisation was required to be considered in light of the submission made by the learned Additional Advocate General-II before the Division Bench on 10.5.2006 and it is for this reason that the matter was sent for consideration by the respondents. Learned counsel submits that the respondents have erred in rejecting the case of the petitioner for his absorption on the post of Electrician in view of the fact that from the list of employees enclosed as Annexure-6 to the writ application, there remains no doubt that the petitioner happens to be senior to Hari Kumar Patel and it is the petitioner who should have been absorbed



prior to him. It is thus submitted that the order impugned be set aside and the reliefs prayed for in the instant application be granted.

11. The application is opposed by learned Additional Advocate General-3 appearing for the State of Bihar. It is submitted that from the records of the case, there remains no doubt that the petitioner was appointed on daily wage and was taken in the work charge establishment as Pump Khalasi by order dated 14.3.1988. The petitioner was regularised/absorbed as a Pump Operator vide order dated 30.11.2006. With respect to the direction of this Court contained in the order dated 20.12.2011 passed in CWJC no.6004 of 2007 that the case of the petitioner be considered in light of the submission made by the learned Additional Advocate General-II before the Division Bench on 10.5.2006, it is submitted by learned Additional Advocate General that a perusal of paragraph no.8 of the judgment in the case of ***Ram Tapeswar Sah vs. State of Bihar; 2010 (3) PLJR 459*** would clearly show that the Government had taken a policy decision on 16.3.2006 and even paragraph no. 8(c) on which great stress has been laid by learned counsel appearing for the petitioner, learned Additional Advocate General submits that the same also refers to persons fulfilling



the criteria as per the Government's policy decision dated 16.3.2006. The so called submission of the then learned Additional Advocate General-II as recorded in paragraph no.8(c) of ***Ram Tapeswar Sah*** (supra) that the inter se seniority will be fixed on the basis of the initial entry in the work or service clearly being in teeth of the Government's policy decision dated 16.3.2006 can in no way be binding on the State Government. It is thus submitted that the order impugned having been passed after considering the case of the petitioner, there is no error nor any illegality in the same and thus the instant application be dismissed.

12. Heard learned counsel for the parties and perused the material on record.

13. The relevant facts in brief are that the petitioner was appointed on daily wage on the post of Pump Khalasi in the PHED on 1.6.1980. By order dated 14.3.1988, he was absorbed under the work charge establishment on the post of Pump Khalasi w.e.f. 13.1.1988. Pursuant to the meeting of the Establishment Committee held on 17.12.1996 and also in view of the contents of the letter no.5548 dated 20.10.1995 of the Finance Department, in view of the Pump Khalasi having I.T.I. (2 years) Electrical trade together with the work experience, by



order dated 31.12.1996 they were appointed on the sanctioned post of Electrician in the scale of Rs.1200-30-1800. The petitioner who was described as a Pump Khalasi, PHED, Muzaffarpur, was appointed as Electrician and posted at Pupri.

14. It subsequently transpires that on 13.4.2002, the respondents wrote a letter to the petitioner asking the petitioner to reply as to why he be not reverted back from the work charge establishment to daily wage. The petitioner moved this Court in CWJC no.6370 of 2002 wherein by order dated 22.5.2002 while directing the respondents to file counter affidavit, this Court ordered that in the meantime, no coercive action shall be taken against the petitioner pursuant to the said show cause notice.

15. The Executive Engineer, PHED, Muzaffarpur thereafter came out with an order dated 30.11.2006 absorbing the petitioner on the post of Pump Operator in the pay scale of Rs.2,650-4,000. A perusal of the said order, brought on record as Annexure-7 to the writ application, would show that the same clearly stated that the petitioner would continue to do the job as he has been doing. It is the categorical case of the petitioner that since the very beginning the petitioner had been doing the job of an Electrician and it is for this reason that pursuant to the decision of the Establishment Committee that the respondents



had come out with an order as far back as on 31.12.1996 appointing the petitioner on the post of an Electrician.

16. The petitioner being affected by the action of the respondents regularising him on the post of Pump Operator moved this Court in CWJC no.6004 of 2007 which was disposed of by the learned Single Judge by order dated 20.12.2011 in the following terms:

“6. Having heard counsel for the petitioner and the State, I am of the view that the case of the petitioner for regularization is required to be considered in the light of the submission made by the learned Additional Advocate General No.-II before the Division Bench on 10.5.2006 incorporated in paragraph 8 of the order dated 13.7.2006, Annexure-13 and appropriate order be passed by Respondent no.3 considering the policy decision of the State Government dated 16.3.2006 in accordance with law, as early as possible, in any case within the same time, which has been granted under order dated 2.12.2011 passed in C.W.J.C. No. 12230 of 2010.

7. In the light of the interim order dated 22.5.2002, Annexure-6 passed in the case of the petitioner, petitioner shall be entitled for arrears of difference of salary of the post of Electrician and the lower post for which he was paid during the period interim order dated 22.5.2002 remained under operation within the same time, provided the same has been paid to other similarly situate employees in whose case also similar interim order was passed.

8. The writ petition is, accordingly, disposed of.”



17. In view of the above, the petitioner filed a representation before the respondents which came to be decided by the Principal Secretary by the order impugned dated 8.10.2012.

18. It would be relevant to state here that great stress has been laid by learned counsel for the petitioner on the judgment in the case of ***Ram Tapeswar Sah vs. State of Bihar; 2010 (3) PLJR 459***. It is submitted by learned counsel for the petitioner that paragraph 8(c) of the judgment clearly spells out the submission of the learned Additional Advocate General-II made before the Division Bench hearing the said batch of cases that the inter se seniority will be fixed on the post of the initial entry in the work or service. It is thus submitted that while the petitioner entered his service on 1.6.1980, he was senior to Hari Kumar Patel whose date of entry in service is 1.1.1981 and thus the petitioner should have been regularised as an Electrician prior to Hari Kumar Patel.

19. Before this Court deals with the above contention made on behalf of the petitioner, it would be relevant to note that in the judgment of ***Ram Tapeswar Sah*** (supra), this Court was dealing with a batch of writ applications wherein the petitioners had challenged the legality and validity of the



orders of the State of Bihar (PHED) issued vide memo no.2322 dated 13.4.2002 directing the petitioners to show cause as to why their appointments in the work charge establishment be not reverted back to daily wage as the same was found to be illegal in view of the resolution of the Finance Department contained in memo no.6394 dated 23.10.1987. The writ application (CWJC no.6370 of 2002) filed by the petitioner was one of the applications in the batch of cases. In paragraph no.8 of the judgment in the case of **Ram Tapeswar Sah** (supra), this Court observed as follows:

“8. A reply to the counter affidavit has also been filed, but when the matter was finally heard on 10.5.2006, learned Additional Advocate General-II, on behalf of the respondent-State Government made the following submissions:-

(a) The Government has taken a policy decision dated 16.3.2006 that any employee of Class-IV having been appointed and having completed 240 days working as a daily wager prior to 11th December, 1990 shall be entitled to be considered for regularisation in the Public Health Engineering Department.

(b) The work charge employees of Class-III and IV who have been reverted to the status of daily wager will be also entitled to be considered for the purpose of benefit of the said decision for regularisation.

(c) The case of the petitioners who are fulfilling the eligibility criteria as per the aforesaid policy will be considered and finalised on or before 30th September, 2006 and the inter se seniority will be fixed on the basis



of the initial entry in the work or service.”

20. A perusal of paragraph no.8, quoted herein above, would show that the Additional Advocate General-II appearing on behalf of the State Government in the said case mentions about a policy decision dated 16.3.2006 having been taken by the Government with respect to regularisation of daily wage Class IV employees. In paragraph no.8(c), the Court further notes the submission of the learned Additional Advocate General to the effect that the case of the petitioner who are fulfilling the eligibility criteria as per the aforesaid policy (of the date 16.3.2006) will be considered and finalised on or before 30.9.2006 and the inter se seniority will be fixed on the basis of the initial entry in the work or service.

21. Learned Additional Advocate General-3 submits that a copy of the Government policy dated 16.3.2006 has been brought on record in the instant application as Annexure-R/1 to the supplementary counter affidavit filed on behalf of the respondent nos.1 to 5. A perusal of the contents of the said resolution/policy and specially Clause 3(i) thereof would show that the inter se seniority of the daily wage employees was to be fixed in the seniority list as per their age. It is thus submitted that though not admitting, even if it is taken for the sake of argument that a submission was made by the then



Additional Advocate General-II as recorded in paragraph no.8(c) of the judgment reproduced herein above, nevertheless the same being contrary to the resolution/policy decision of the Government dated 16.3.2006, it would not be binding on the State Government. This Court finds substance and merit in the submissions made by learned Additional Advocate General-3.

22. It would be relevant to refer to the judgment in the case of ***Himalayan Cooperative Group Housing Society v. Balwan Singh and others; (2015) 7 SCC 373*** relied on by learned Additional Advocate General-3 for the State of Bihar wherein in paragraph nos.31 and 32, Hon'ble Supreme Court held as follows:

“31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is



authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights."

23. It may be noted here that so far as the Government policy dated 16.3.2006 is concerned, the same is not under challenge by the petitioner in the instant application. The same clearly provides that so far as the seniority of the daily wage employees is concerned, the same would be arranged as per their age. Besides Hari Kumar Patel not having been made a party respondent in the instant writ application, as per the document annexed to the writ application itself, it is also not in dispute that Hari Kumar Patel is elder to the petitioner herein, their respective date of birth being 1.12.1961 and that of the



petitioner being 12.1.1962.

24. In view of the facts and circumstances of the case, so far as the prayer of the petitioner of his absorption in the post of Electrician over and above Hari Kumar Patel is concerned, the Court finds no illegality in the rejection of the prayer of the petitioner by the respondents and the impugned order dated 8.10.2012 so far as this prayer is concerned stands upheld.

25. At this stage, it would be relevant to point out that it is also not in dispute that the petitioner had been working as an Electrician after the meeting of the Establishment Committee led the respondents to appoint the petitioner, a Pump Operator, on the post of Electrician by order dated 31.12.1996. Even the order of absorption of the petitioner dated 30.11.2006 (which was challenged in CWJC no.6004 of 2007) would also show that though he was regularised as a Pump Operator, the same categorically stated that he would continue to perform the work as before which was of an Electrician. It has been the case of the petitioner and not denied by the respondents that he continued to discharge the work of an Electrician till his retirement in the year 2022.

26. At this stage, it would also be relevant to refer



to the resolution of the Finance Department, Government of Bihar contained in memo no.10710 dated 17.10.2013 (Annexure-12 to the rejoinder of petitioner to the counter affidavit of the respondents). Clause 4 (vi) clearly states that if no post is available in the regular establishment then while converting the work charge employees in the regular establishment, the post of work charge will be converted into regular establishment but such post will not be treated as sanctioned post in the cadre but the same will be automatically abolished after superannuation of the concerned employee or his death during the service period.

27. It would also be relevant to refer to the judgment dated 22.4.2016 of this Court in ***LPA no.1686 of 2010 (Pramila Devi vs. State of Bihar & Ors.)*** wherein this Court was pleased to hold/observe as follows:

“3. The claim is simple, that the reason was made to officiate at a higher post with higher responsibility was undisputed, made to officiate at higher post with higher responsibility not for a short period adjustment or as a stop gap arrangement, but for four long years. He was even otherwise qualified and competent to hold the post. In such an event, he could not be deprived of full remuneration of the higher post.

4. State urges that in the notification itself, it was stated that he would not be entitled to the benefits of the said higher post. Thus, all he could at best claim is



a deputation allowance and nothing more. We are sorry, we cannot accept the stand of the State. It is now well settled, where an officer competent to hold the higher post is made to officiate on a higher post not for a short period or as a stop gap arrangement, but for a considerable long period, the post being higher post and involving high duties and responsibilities, the person would be entitled to full benefits of that post.

5. Taking any other view of the matter, would allow the government or employer to take advantage of the situation, and make juniors work in senior post with remuneration of junior pay scales. That would be completely arbitrary and grossly discriminatory. No government can be permitted to take work of higher post to the higher duties and responsibilities and not pay for it. A stipulation to that effect would be clearly contrary to public policy and should also be arbitrary and violative of Article 14 of the Constitution.”

28. In view of the facts and circumstances of the case narrated herein above, the Government policy dated 16.3.2006 not being under challenge, the Court finds no illegality in the order impugned so far as not absorbing the petitioner over and above Hari Kumar Patel is concerned. However, in view of the resolution dated 17.10.2013 brought on record by the petitioner together with the decision in the case of ***Pramila Devi*** (supra), the Court holds that the petitioner is entitled to the financial benefits which would accrue to him as a result of having discharged the duties of an Electrician from 31.12.1996 till the date of his retirement. The petitioner will be



entitled to represent before the respondents for the grant of benefit of ACP which shall be decided by the respondents within a period of four months.

29. In case the respondents find the petitioner to be entitled for the benefit under the ACP scheme, the same shall be given to the petitioner within the aforesaid period. In case the petitioner is not found entitled for the benefits thereof, a reasoned order shall be communicated to the petitioner also within the same period.

30. All the financial benefits as a result of the entitlement of the petitioner having worked on the post of an Electrician w.e.f. 31.12.1996 and deducting the amount already paid, the difference thereof shall be paid to the petitioner within a period of four months.

31. The writ application stands partly allowed with the above observations and directions.

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	9.9.2025
Uploading Date	8.10.2025
Transmission Date	

