

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17720 of 2013

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1. Shiv Kumar Prasad and Anr S/O Late Jago Mahto Resident Of Village-Gawashpur, P.O- Niriya Tulsipur, P.S- Karay Parsurary, District- Nalanda.
 2. Shiya Sharan Prasad S/O Late Ganga Bishun Bhagat Resident Of Village Post P.S- Telhara, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Chief Engineer Mechanical Public Health Engineering Department, Bisheshwariya Bhawan, Bailey R
3. The Superintendent Engineer, Public Health Engineering Circle, Patna.
4. The Executive Engineer, Public Health Engineering Division, Hilsa.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Lalan Kumar Singh, Advocate
For the State	:	Mr. Dhurjati Kr. Prasad, G.P.14

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT
Date : 15-05-2026

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following reliefs:

“i). That an appropriate writ or direction be issued to the Respondents commanding them to consider for reinstatement in service with all consequential benefits like the similarly situated employee given the said benefits.

ii). That the order contained in Memo No.261 dated 14.04.2009 may kindly be quashed on the ground of misplace replying upon the fact as well as the policy of the Government.

iii). That an appropriate writ or direction be also issued and commanding the



respondent to computing the entire length of service till the date of reinstantment in view of the decision taken by the State Government in view of the Judgement of the Hon'ble Apex Court.”

3. The brief facts, giving rise to the present writ petition, are that the petitioners were appointed by the competent authority in the regular pay scale of Rs.825-1200/- with all admissible allowances, on the sanctioned and vacant post of Plumber vide Memo No.2182 dated 17.12.1994, issued under the signature of the Superintending Engineer, Public Health Engineering Department, Circle Patna, Government of Bihar, Patna, pursuant to the directions issued by this Hon'ble Court in C.W.J.C. No.6791 of 1991 and Memo No.67, dated 18.01.1994, issued under the signature of the Engineer-in-Chief-cum-Special Secretary, Department of Public Health Engineering, Government of Bihar, Patna, whereby all the Superintending Engineers of the department were directed to initiate the process of appointment on the post of Plumber. The petitioners gave their joining and started receiving the pay and perks admissible to them. The service book of the petitioners were opened and even G.P.F. and L.I.C. amounts were started to be deducted from the monthly salaries of the petitioners. All of a sudden, the services of the petitioners was terminated vide order dated 31.12.2001 on the ground that the petitioners were



earlier working as a work charge establishment employee and were appointed after the cut off date i.e., 23.10.1986 fixed by the Finance Department. The petitioners assailed the said order dated 31.12.2001, by filing a writ petition before this Hon'ble Court. The said writ petition was heard along with C.W.J.C. No.7359 of 2002 (Ram Tapeswar Sah & Ors. Vs. The State of Bihar & Ors.) and its analogous cases by a Hon'ble Division Bench of this Court, along with five Letters patent Appeals. The Hon'ble Division Bench of this Court, vide order dated 13.07.2006, proceeded to dispose of the cases, with a direction to the State Government to constitute a high level committee of the higher officials to consider the cases of all the petitioners, after giving them opportunity to place their respective claims and to decide the matter in terms of the judgment of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka v. Uma Devi (3), reported in (2006) 4 SCC 1**. Some other directions were also given by the Hon'ble Division Bench. Pursuant to the directions, issued by this Hon'ble Court dated 13.07.2006, the petitioners submitted a detailed application for their absorption in view of the statutory Rule, 1949, but no order for reinstatement was passed by the respondents authorities, even though similarly situated persons



were reinstated in service, with all consequential benefits vide Memo No.418, dated 08.05.2007, issued under the signature of the Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna. The petitioners kept on filing representation before the respondents authorities, but no action was taken and vide Memo No.261, dated 14.04.2009, issued under the signature of the Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna, the claim of the petitioners for appointment through absorption has been rejected.

4. The learned counsel for the petitioners submits that the respondents authorities have acted in an arbitrary manner, since on the one hand, they have reinstated the similarly situated employees, but on the other hand, have rejected the claim of the petitioners on frivolous ground. The petitioners were not regularized from work charge establishment, rather they were appointed/absorbed on the basis of the directions given by this Hon'ble Court and therefore, the respondent authorities, without application of mind have proceeded to terminate the services of the petitioners. The learned counsel for the petitioners further submits that the petitioners have attained the age of superannuation in the year



2018, during pendency of the present writ petition. He further submits that the petitioners are entitled for all the benefits, accorded to similarly situated employees, in view of Clause 4C(1) of the Bihar State Litigation Policy, 2011. He finally submits that in view of different judicial pronouncements of this Hon'ble Court as well as the Hon'ble Supreme Court of India, the petitioners are entitled for similar benefits, which has been given to similarly situated employees, and are also entitled for post retiral benefits/pensionary benefits.

5. The learned counsel for the petitioners refers to and relies upon a judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.14753/2024 (Madanlal Sharma (dead) through LRS. vs. The State of Madhya Pradesh & Ors.)**, wherein the Hon'ble Supreme Court of India proceeded to award/grant all the retiral benefits to the deceased petitioner to which he was entitled, treating him to be a permanent employee, as well as the benefit on account of family pension with 6% interest.

6. The learned counsel for the petitioners further refers to and relies on a judgment of this Court, reported in **2018 (2) PLJR 929 (Amresh Kumar Singh vs. State of Bihar & Ors.)**, wherein in paragraph no.7 to 10, the Hon'ble Division



Bench of this Court has held as follows:-

“7. We are conscious of the law laid down in the case of **Uma Devi** (*supra*) and various other legal issues that are involved in the matter, but the fact remains that in the cases of thirty employees who were dealt with under similar circumstances, not only similar, but under identical situations, twenty-eight employees, by virtue of the orders passed in the writ petitions and L.P.A's. have been reinstated and it is only two persons who are litigating the matter. The Bihar State Litigation Policy, 2011, as indicated hereinabove, mandates that all similarly situated employees should be granted the benefit of covered matters and if orders of the Court have been implemented in case of certain litigants, it should be implemented in respect of all other identically situated persons. If the State Litigation Policy is to be implemented, we have no hesitation in holding that the present respondents should also be dealt with in identical fashion *i.e.* respondent Surendra Prasad Mahto @ Surendra Pd. Mahto in L.P.A. No.1509 of 2009 and the appellant Amarish Kumar Singh in L.P.A. No.1028 of 2007 in identical situation and once on 21.4.2011 a Division Bench of this Court in all other cases has granted benefit to the employees, there is no reason to go into the legal questions involved in the matter and answer them when we find that in the cases of twenty-eight employees the benefit has been granted to them by virtue of the orders passed by this Court.

8. Accordingly, we are of the considered view that the legal question referred for consideration and the tenability or otherwise of the



orders passed on 20th of January, 2008 in L.P.A. No.799 of 2007 and the order passed on 21.4.2011 in L.P.A. No. 1470 of 2009 and other cases need not be gone into now in these two cases.

9. The legal questions are kept open, to be considered in any appropriate case, but taking note of the fact that under identical situations employees, more than twenty-eight in number, have been granted the benefit, we dismiss the L.P.A. filed by the State Government *i.e.* L.P.A. No. 1509 of 2009, allow the L.P.A. filed by the appellant Amarish Kumar Singh, *i.e.* L.P.A. No. 1028 of 2007, in view of the findings recorded on 20th of January, 2008 in L.P.A. No. 779 of 2007 and on 21.4.2011 in L.P.A. No. 1471 of 2009, quash the order passed by the learned Writ Court in C.W.J.C. No. 7493 of 2000 and direct that both Amarish Kumar Singh and Surendra Prasad Mahto @ Surendra Pd. Mahto should be dealt with in identical fashion as has been done in the cases of twenty-eight persons who have been reinstated in service vide order dated 19.8.2011. The issue with regard to applicability of the orders passed on 21.4.2011 in L.P.A. No.1471 of 2009 and on 20th of January, 2008 in L.P.A. No. 799 of 2007 to other employees apart from the thirty employees involved in the matter is kept open, to be considered as and when required in accordance with law and it is made clear that the orders passed by this Court on 21.4.2011 in L.P.A. No. 1471 of 2011 and on 20th of January, 2008 in L.P.A. No. 779 of 2007 will not be treated as a precedent for the purpose of its applicability to any other employees other than the thirty employees involved in the matter. The State Government will have



liberty to challenge the orders passed in these L.P.A's. with respect to any other employee except these thirty employees.

10. Accordingly, L.P.A. No. 1028 of 2007 is allowed. Order passed in C.W.J.C. No. 7493 of 2000 quashed and Amarish Kumar Singh is directed to be reinstated and granted the benefit as has been granted to the twenty-eight employees by virtue of the order passed on 19.8.2011 by the State Government. Similarly L.P.A. No. 1509 of 2009 is dismissed. The order passed by the learned Writ Court is upheld and the respondent Surendra Prasad Mahto @ Surendra Pd. Mahto is also directed to be granted the benefit of the order dated 19.8.2011 passed by the State Government.”

7. The learned counsel for the petitioners further refers to and relies on a Full Bench judgment of this Hon'ble Court in the case of **Mobina Khatoon vs. State of Bihar through Principal Secretary & Ors.**, reported in **2019 (1) PLJR 1015**, wherein in paragraph no.71, it has been held as follows:

“71. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in this regard is framed by the Government:-

(i) That a work-charged employees who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid pension and his family, in case of death of such work-charged employee, would be paid the family pension.



(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment.”

8. *Per contra*, the learned counsel appearing on behalf of the Respondent-State submits that the petitioners were appointed as Plumbers vide Memo No.2182, dated 17.12.1994, and in the said appointment letter, it was clearly mentioned that the appointment is purely temporary and the same is being made in anticipation of approval from the department of P.H.E.D., Government of Bihar, Patna. It was further mentioned that in case of any dispute, the services of the petitioners would be terminated without any notice. He further submits that as per the averments, made in the writ petition, the petitioners were terminated on 31.12.2001, however in the counter affidavit, it has been mentioned that the petitioners have been terminated vide Order No.8, dated 15.01.2002.

9. The learned counsel appearing on behalf of the State-Respondents submits that in view of order dated



13.07.2006, passed in C.W.J.C. No.7359 of 2002 and its analogous cases, a three men committee was constituted to inquire into the validity of the appointment of the petitioners and other similarly situated employees. The Committee considered the case of the petitioners and others and after considering all the documents and hearing the parties, the Committee rejected the claim of the petitioners on the ground that the petitioners were appointed after cut off date, i.e., 11.12.1990. He further submits that as per the stand of the department, there was no sanctioned and vacant post of Plumber in the Public Health Engineering Department and it was only in the year 2005, total 2277 posts were sanctioned by the government. The petitioners were appointed against the policy decision of the State of Bihar, contained in Memo No.639, dated 16.03.2006. Further vide Memo No.5074, dated 20.02.1990, it was notified that the work charge employees appointed after 21.10.1984 cannot be regularized. The petitioners were not appointed after following all the procedures, applicable in law, since no advertisement and selection process was issued and even then the petitioners have been appointed. The learned counsel for the State further submits that at present, the petitioners have already retired in



2018, therefore, they cannot be absorbed at this stage, since they have crossed the age of superannuation in 2018 itself.

10. The learned counsel for the State refers to and relies on a judgment of the Hon'ble Supreme Court of India in the case of **State of Orissa & Anr. v. Mamata Mohanty**, reported in (2011) 3 SCC 436, wherein in paragraph nos.37 and 56, the Hon'ble Supreme Court of India held as follows:

“37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide *Upen Chandra Gogoi v. State of Assam*, *Mangal Prasad Tamoli v. Narvadeshwar Mishra and Ritesh Tewari v. State of U.P.*)

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide



Chandigarh Admn. v. Jagjit Singh, Yogesh Kumar v. Govt. of NCT of Delhi, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P., Krishan Bhatt v. State of J & K, Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal.)

11. The learned counsel for the State further refers to and relies on a Full Bench judgment of this Court, reported in **2013 (1) PLJR 964 (Ram Sewak Yadav vs. The State of Bihar**, wherein in paragraph no.43, the Hon'ble Full Bench has held as follows:

“43. We therefore sum up our conclusions and answer the reference as follows:-

(A) *Uma Devi (supra)* prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

(C) Irregular appointments can be regularised if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have



continued in service for over ten years without intervention of any court orders.”

12. The learned counsel for the State further refers to and relies on a judgment of the Hon’ble Supreme Court of India in the case of **Uma Devi** (supra), wherein in paragraph no.43, the Hon’ble Supreme Court of India has held as follows:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such



continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

13. Having heard the learned counsel for the parties



and after considering the documents on record, this Court finds that, although the petitioners were said to have been appointed as Plumber on 17.12.1994, i.e. after 11.12.1990, the cut off date till when the work charged employees were entitled to be regularized . From the stand taken by the State Government in their counter affidavit, it is evident that in the Public Health Engineering Department, no post of Plumber was sanctioned and in fact it was only in the year 2005, the posts of Plumber was sanctioned by the State Government, for the P.H.E.D. Despite that the petitioners were appointed as Plumber on 17.12.1994, even though work charge employees appointed after cut off date of 11.12.1990 were not entitled for regularization. It appears from the record that the services of the petitioners was terminated vide Order No.8, dated 15.01.2002, which was challenged by filing C.W.J.C. No.1978 of 2002. The said writ petition was disposed of on 13.07.2006 with a direction for consideration of the claim of the petitioners and other similarly situated persons. Ultimately the claim of the petitioners was rejected by the Chief Engineer, P.H.E.D. vide Memo No.261, dated 14.04.2009. The petitioners challenged the said order in the year 2013 without giving any explanation for the delay in challenging the said order. It is the case of the



petitioners that similarly situated persons were reinstated, but it is trite to rely upon the judgment of the Hon'ble Supreme Court in the case of **Mamata Mohanty** (supra), wherein in paragraph no.56, the Hon'ble Supreme Court of India has been pleased to hold that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality as relied upon by the Respondent-State. The Hon'ble Supreme Court of India in the case of **Mamata Mohanty** (supra) further held in paragraph no.37 that if an order is bad in its inception, it does not get sanctified at a later stage. So far the judgment relied upon by the learned counsel for the petitioners are concerned in the case of **Madanlal Sharma** (supra), this Court is of the opinion that the same is not applicable to the facts of the present case or even the judgment relied upon by the learned counsel for the petitioners in the case of **Amresh Kumar Sinha** (supra), the same is also not applicable, since no negative equality can be claimed in a case where the appointment itself was against unsanctioned post. Further the judgment in the case of **Mobina Khatoon** (supra) is also not applicable in view of the fact that petitioners remained in employment only for a period of about seven years.

14. Considering the entire aspects of the matter,



either with regard to delay, availability of sanctioned posts and the principle that Article 14 does not envisage negative equality, this Court is of the opinion that the petitioners have failed to make out a case and having found no illegality in the order impugned and the finding on merit, in the writ petition, the same is hereby dismissed.

15. Pending application(s), if any, shall also stand disposed of.

(Ritesh Kumar, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	24.03.2026
Uploading Date	15.05.2026
Transmission Date	NA

