

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16751 of 2013

- 1.1. Savita Sinha Widow of Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.2. Deepak Verma Son of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.3. Chandan Kumar Verma Son of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.4. Shambhu Kumar Verma Son of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.5. Kundan Kumar Verma Son of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.6. Smt. Ragini Sinha Daughter of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.
- 1.7. Smt. Madhu Sinha Daughter of Late Krishna Gopal Prasad, Residing at Mohalla - Veer basawan Singh Nagar, near Vijay Nagar Lane, near Petrol Pump, Rukunpura, Bailey Road, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Secretary, Road Construction Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Managing Director, Bihar State Bridge Construction Corporation Limited, 7 Sardar Patel Marg, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Sunita Kumari, Advocate
For the State : Mrs. Kumari Amrita, GP- 3
Mr. Rajesh Kumar, AC to GP- 3



For the Corporation : Mr. Vikash Kumar, Advocate
Ms. Aradhana Kumari, Advocate

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT**

Date : 22-09-2025

Heard learned counsel for the parties.

2. The petitioner has filed the instant application for the following reliefs:

“i. For issuance of appropriate writ in the nature of mandamus seeking direction to respondents to consider and regularize the service of petitioner upon the post of correspondence clerk cum typist on the basis of some preference given as he had already worked upon such post without offending Article 14, 16 of Constitution of India as petitioner had been working continuously upon such post which was vacant.

ii. For issuance of appropriate writ in the nature of certiorari for quashing the decision taken by Secretary-Administration Bridge Construction and Communicated to petitioner vide Memo no.1920 dated 17.6.2013 whereby and whereunder he had rejected the claim of petitioner regarding adjustment upon the post of clerk cum typist.

iii. For issuance of appropriate



writ in the nature of mandamus seeking direction to respondents, to pay the arrears of salary upon the post of correspondence clerk cum typist upon which petitioner had rendered his service till the date of his retirement but in spite of several correspondence made by petitioner as well as secretary Road Construction Department (Respondent no.1), the Respondent no.2 (Managing Director Bihar State Bridge Construction Corporation) has not considered the case of petitioner upon the principle of equal pay for equal work.

iv. For any other relief/reliefs for which the petitioner is entitled for.”

3. The original petitioner having died on 25.7.2014 was substituted by his legal heirs.

4. The case of the petitioner in brief is that he was initially appointed on 12.1.1976 on the post of shorthand-cum-correspondence clerk-cum-typist on daily wages in the office of the Senior Project Engineer, Division no. 2, Motihari. He worked in the said capacity till 30.9.1976. He was once again appointed on 1.12.1976 on the post of typist in the office of the Chairman-cum-Managing Director, Bihar State Bridge Construction Corporation Limited where he worked till 22.6.1978. It is further contended that he worked for different



periods pursuant to the order/letter dated 5.7.1978 issued from the office of the Senior Project Engineer, Division no. 2, Motihari and once again pursuant to the letter dated 10.2.1985.

5. Learned counsel for the petitioner submits that the petitioner moved this Court in C.W.J.C. no. 6510 of 1989, however, the same was dismissed by order dated 15.12.1989 observing that if any vacancy exists against sanctioned post, then the petitioner may be given preference without offending Articles 14 and 16 of the Constitution of India. In spite of repeated representations, no steps were taken by the respondents and his last representation was disposed of by order dated 17.6.2013 against which the instant writ application has been preferred.

6. The relief sought for by the writ petitioner is that he be regularized on the post of correspondence clerk-cum-typist, the order rejecting his representation be set aside and he be paid the arrears of salary for the post of correspondence clerk-cum-typist for the service rendered by him.

7. The application is opposed by learned counsel appearing for the respondents who submits that the writ application (C.W.J.C. no. 1610 of 1989) preferred by the petitioner was dismissed on 15.12.1989 and his representation



stood disposed on 17.6.2013. The petitioner has not made out any case for regularization.

8. Heard learned counsel for the petitioner and perused the material on record.

9. The relevant facts not in dispute are that the petitioner filed C.W.J.C. no. 6510 of 1989 which was dismissed by a Division Bench of this Court by order dated 15.12.1989.

10. The complete order dated 15.12.1989 is reproduced herein below for ready reference:

“Heard Mr. Subhash Kishore Verma on behalf of the petitioner and Mr. B.S. Tiwary on behalf of the respondent-Corporation.

Obviously the appointment of the petitioner was not made after complying with the provisions of Article 16 of the Constitution of India inasmuch as his appointment on daily wage basis and later in a work charge establishment was without any public advertisement and without going through any process of selection. This Court has consistently held that these two requirements contained in Article 16 are mandatory and if any appointment is made in breach of Article 16, such appointment is not merely irregular but invalid, and the person so appointed cannot claim any right



therefrom.

Learned counsel for the petitioner submits that in future the posts of Correspondence Clerk-cum-Typist may be filled up and that his case should also be considered when such appointments are made.

We direct that in future when any vacancy exists against sanctioned posts, the respondent-Corporation will make appointments only in a regular way after following the constitutional mandate. The process of appointing persons on temporary basis without following the provisions of Articles 14 and 16 of the Constitution of India and ultimately making them permanent by a process of 'regularisation' is a fraud upon the Constitution, because by this ingenious device the fundamental right of equal opportunity enshrined in Article 16 is completely defeated. However, as has been pointed out by the Supreme Court in several decisions, it is open to the state to formulate a scheme whereby the persons working under it on temporary or casual basis may be given some preference without offending Articles 14 and 16 of the Constitution of India.

We do not find any reason to grant the relief prayed for by the petitioner



and, accordingly, this application is dismissed.”

11. With respect to the appointment of the petitioner, the Division Bench of this Court in its order dated 15.12.1989 held that the appointment of the petitioner was not made after complying with the provisions of Article 16. There was no public advertisement nor was any process of selection followed. As such, it held the appointment to be invalid and that the person so appointed (petitioner herein) could not claim any right therefrom.

12. The Court further observed that in future when any vacancy exists against any sanctioned post and the respondent corporation make any appointments on regular basis, as pointed out by the Hon'ble Supreme Court, it will be open for the State to formulate a scheme whereby the persons working under it on temporary or casual basis may be given some preference.

13. With the above observations, the writ petition filed by the petitioner was dismissed.

14. It may be observed here that no appeal was preferred by the petitioner against the order dated 15.12.1989 dismissing C.W.J.C. no. 6510 of 1989 and the said order attained finality.



15. Further the order impugned dated 17.6.2013 rejecting the representation of the petitioner would so that the respondents had not come out with any advertisement wherein the original petitioner could be given any preference/weightage for having worked on temporary basis, even as claimed by him.

16. In the facts and circumstances of the case, in the opinion of the Court, the original petitioner has not made out any case for regularization of his service. Now, as stated above, the original petitioner also died in the year 2014.

17. The petitioners have not made out any case for grant of any relief by this Court. The Court finds no merit in the instant application.

18. The application is dismissed.

(Partha Sarthy, J)

sauravkrsinha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2025
Transmission Date	NA

