

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6624 of 2018

Bipin Kumar Son of Sri Indradeo Prasad Singh, resident of Village P.O. P.S.-
Maranchi, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Engineer-in- Chief-cum- Special Secretary, Public Health Engineering Department, Bihar, Patna.
4. The Chief Engineer Mechanical, Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Patna.
6. The Executive Engineer, Public Health Engineering Division, Patna East, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Siyaram Pandey, Advocate
For the Respondent/s : Mr.Arvind Ujjwal-SC4

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 20-08-2024

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for a direction to the respondent authorities, especially respondent No.5, namely, the Superintending Engineer, Public Health Engineering Circle, Patna to regularize/absorb the services of the petitioner on the post of Nalkoop Khalasi, Group -D post in compliance of undertaking given by the department to provide a permanent job in lieu of the land given by the petitioner upon



which a pump house was built by the department under the Rural Water Supply Scheme of the State w.e.f. 20.09.1985 as the petitioner was initially engaged as a daily wage employee on 20.09.1985 and since then he has been working continuously and discharging his duty.

3. Learned counsel for the petitioner submits that the father of the petitioner had donated his ancestral land having Khata No. 1015, Khesra No. 5079, and Touzi No. 86/440 to the Department of Public Health Engineering Department for the construction of a Pump chamber in the village of Maranchi, District-Patna under the Rural Water Supply scheme of the Govt. of Bihar. He further submits that the Superintending Engineer, Public Health Engineering Circle, Patna vide its order dated 20.09.1985 issued an appointment letter in favour of the petitioner after acquiring his land for the purpose of construction of a Water pump after getting the certificate from the Mukhiya of the village and after getting the recommendation of the concerned, the then, Minister of the State. The said appointment letter is annexed as Annexure -2 to the writ petition.

4. Learned counsel further submits that the petitioner started working as a daily wage employee on the post of Pump



Khalasi, a Group 'D' post, with an assurance that his services would be absorbed under permanent establishment but even after repeated representations, his services were not regularized and in respect thereof, he was retrenched vide letter no. 2306 dated 13.04.2002, as contained in Annexure-8 to the writ petition. Learned counsel further submits that against the said retrenchment order dated 13.04.2002, a series of writ petitions were filed in which submission was made for clubbing of all the writ petitions and direction was given by this Hon'ble Court. In CWJC No. 7359 of 2002 (Ram Tapeswar Sah and Ors. Vs. The State of Bihar and Ors. with batch cases), vide order dated 13.07.2006, this Hon'ble Court has directed the State Government to regularize the services of daily wage employees who were taken within the cut-off date fixed by the Government. In consonance thereof, the State Government came with a circular /Letter No. 639 dated 16.03.2006 issued by the General Administrative Department, Bihar, Patna.

5. Learned counsel for the petitioner further submits that vide letter dated 30.11.2006, the services of the petitioner with other 19 employees were absorbed, GPF accounts were opened, deduction made and salary started. The services of the petitioner were regularized on the basis of a merit list prepared



on the date of entry into the service. Annexures 10 and 11 are relevant in this regard. Learned counsel further submits that vide order dated 26.10.2007, the petitioner's services are again retrenched as daily wage employees, and a fresh merit list was prepared on the basis of date of birth. Learned counsel further submits that after that the petitioner started working as a daily wage employee and has written time to time to the department for regularization of his service upon getting information that many similarly situated employees of the department have been absorbed but the petitioner was discriminated, the petitioner filed the present writ petition in April 2018 seeking relief before this Hon'ble Court for regularization of his services.

6. Learned counsel further submits that the office of the Executive Engineer, Public Health Division, Patna, East, Patna vide Memo No. 1079 dated 15.05.2018 retrenched the petitioner from service even without providing any opportunity of hearing or giving any prior notice which he has challenged by way of filing Interlocutory Application No. 4473 of 2018 which is also pending along with the present writ petition for disposal. Learned counsel for the petitioner submits that there are so many other persons working as daily wage who have also retrenched from the service by the order of the department and



so they filed their separate writ petitions and were absorbed and presently working in the Division. In the same way, the petitioner was also absorbed as a daily wager and presently working in the division.

7. Learned counsel for the petitioner in support of his argument has placed reliance on the judgement rendered in the case of **Umesh Mandal Vs. The State of Bihar and Ors. in CWJC No. 20170 of 2016** and other analogous cases, in which vide order dated 16.03.2018, this Court has pleased to allow the writ petition and directed the respondent to regularize the petitioner of that writ petition with all consequential benefits arising therefrom including continued back-wages etc. He further submits that the case of the petitioner is squarely covered by the case of **Umesh Mandal (supra)**.

8. On the other hand, learned counsel for the State submits that the writ petition of the petitioner is not maintainable and is fit to be dismissed on the ground of delay in approaching this Court. Counsel further submits that the petitioner has approached this Hon'ble Court after the lapse of about 11 years. According to him, the cause of action for the petitioner arose in the year 2007 itself when by virtue of a letter dated 26.10.2007 his services were reverted back as daily wage



from the permanent employee but he sat over the matter for about 11 years since 2007 and he came before this Hon'ble Court in 2008. Counsel further submits that there are a series of cases in which Hon'ble Supreme Court has categorically held that the belated challenge of the order of dismissal from service by approaching the court after a delay of four years does not deserve any indulgence on the ground of delay alone.

9. Learned counsel for the State further submits that the Hon'ble Patna High Court in the case of *Shanichar Bind Vs. the State of Bihar and Ors. being CWJC No. 16171 of 2017*, has categorically held that since the petitioner has not filed the writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, especially considering the fact that the petitioner has not offered any reasonable explanation for the inordinate delay of about 7 years, which has taken place in approaching this Court. In the said case, the Hon'ble Court has also relied upon the other judgments such as *Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T. T. Murali Babu* reported in (2014) 4 SCC 108; *the State of Uttaranchal and Anr. Vs. Shiv Charan Singh Bhandari and Ors.*, reported in 2013 AIR SCW 6627; *C. Jacob Vs. Director of Geology and Mining and Anr.*,



reported in *AIR 2009 SC264; the State of Jammu and Kashmir Vs. R. K. Zalpuri and Others* reported in *AIR 2016SC 3006 and State of Tamilnadu Vs. Seshachalam* reported in *(2007) 10 SCC 137*. He further submits that the Hon'ble Supreme Court in the case of *Chennai Metropolitan Water Supply and Sewerage Board (supra)* has held that a belated challenge to the order of dismissal from service by approaching the Court after a delay of four years does not deserve any indulgence and on the ground of delay alone, the writ court should have thrown the petition overboard at the very threshold.

10. Learned counsel further submits that the factual matrix of the case has correctly been narrated by the counsel for the petitioner that the father of the petitioner had donated his ancestral land having Khata No. 1015, Khesra No. 5079, and Touzi No. 86/440 to the department of Public Health Engineering Department for construction of Pump chamber in the village of Maranchi, District-Patna under the Rural Water Supply scheme of the Govt. of Bihar on assurance to provide employment to his son (petitioner). His son i.e. the petitioner was appointed after acquiring the land for the purpose of the construction of a water pump after getting the certificate from the Mukhiya of the village and after getting recommendation of



the then Minister of the State. Learned counsel further submits that in the year 2002, the petitioner wrote a letter to the Sub-Divisional Officer Public Health Sub-Division and in respect thereof, the petitioner was retrenched from service on 13.04.2002 but subsequently his service was allowed to regularize in the light of the decision of the Executive Engineer. But subsequently, in the light of the decision of this Hon'ble Court, the matter was referred before the Three Men Committee.

11. Learned counsel further submits that the said Committee was constituted in the light of the decisions rendered in the case of **Umesh Mandal Vs. The State of Bihar and Ors. in CWJC No. 20170 of 2016**. He further submits that the facts of the case of *Umesh Mandal (supra)* is different as there were Group --D posts available in the case of *Umesh Mandal(supra)*. Here in the present case, there was no Group-D post available and the appointment of the petitioner was not against the vacant sanctioned post. As such, he was not entitled to regularization and parity of *Umesh Mandal(supra)* could not be granted to the petitioner. Learned counsel further submits that the case of the petitioner is also not based on the discrimination as order of removal which has been challenged by the petitioner which is Annexure 13 has been made by a Three Men Committee



constituted in the light of the decision made by this Hon'ble Court in M.J.C.No. 1030 of 2006 Sushil Kumar Pandey and Ors Vs. The State of Bihar and Ors. which is apparent from Memo No. 787 dated 26.10.2007, as contained in Annexure 13 to the writ petition (order impugned).

12. In the light of the discussions made by the parties, it transpires to this Court that the petitioner is primarily aggrieved by the decision of Memo No. 787 dated 26.10.2007, as contained in Annexure 13 to the writ petition which is basically the decision of a Three Men Committee which was formed in the light of the decision of this Hon'ble Court but only communicated by the Chief Engineer (Mechanical). This Court is of the firm view that once a Three Men Committee has decided the case of the petitioner for one time then again reference cannot be made for consideration of the case of the petitioner for regularization a second time as it is the specific direction in the case of the *Secretary, State of Karnataka Vs. Uma Devi*, reported in *(2006) 4 SCC 1*. Therefore, the petitioner is not entitled to regularization by virtue of the length of his service. On the other hand, there is one aspect of the matter that the land of the petitioner had been provided to the State of Bihar for the purpose of construction of a water tank and then the



Superintending Engineer and the Minister of State had assured to provide engagement of the petitioner in lieu of the land and for the same the petitioner or his family member has not received a single penny towards the said land as it transpires from the pleading. It also transpires to this Court that the petitioner was working as a daily wage employee on the post of Pump Khalasi which was subsequently taken by the petitioner vide Memo No. 1079 dated 15.05.2018 and he was retrenched from service which the petitioner has challenged by way of filing Interlocutory Application No. 4473/2018. In this regard, this Court is of the view that on an assurance to provide employment, the land has been taken in the year 1995 and in lieu thereof, the employment has also been provided as daily wage as Pump Khalasi, but such type of assurance granted by the officials and assurance given by the Minister of State not only creates the doctrine of estoppel on paper but also it is a estoppel in action and conduct and, therefore, the equity demands that the Memo No. 1079 dated 15.05.2018 by which the petitioner had been retrenched should be set aside and the petitioner be directed to be engaged on daily wage as Pump Khalasi on which he was working prior to 15.05.2018, till completion of his age of retirement.



13. Hence, in result this writ petition is allowed in part, but due to delay and latches, the petitioner is not entitled for regularization and he shall be only entitled to be engaged as Pump Khalasi, Group D post, with back-wages w.e.f. 15.05.2018, to the day on which he was retrenched.

14. Accordingly, Memo No. 1079 dated 15.05.2018 is hereby set aside with the aforesaid observation.

15. With the aforesaid observation and direction, the writ petition stands disposed off.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22/08/2024
Transmission Date	NA

