

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20508 of 2018

1. Ram Pukar Singh, son of Chandradeep Singh, Resident of Village - Kansara, Police Station - Kinjar, District- Arwal.
2. Moti Lal Singh Son of Late Indradeo Singh Resident of Village - Sobi Dumra, P.S. - Muffasil Ara, District - Ara.
3. Narayan Singh, Son of late Harihar Singh, Resident of Mahalla-Maulaganj, Nai Sarak, P.S. -Civil Line, District -Gaya
4. Kishore Mahto, son of late Dungur Mahto, Resident of Village-Basaria, P.S. Lchak, District-Hazaribagh (Jharkhand)
5. Brinda Prasad Sharma, son of late Pradip Sharma, Resident of Village-Indarpur, PS. Makhdumpur, District -Jehanabad
6. Ram Swaroop Paswan, Son of late Bishmbhar Paswan, Resident of Village-Alawalpur, P.S.- Kurtha, Disrict -Jehanabad
7. Manoj Kumar Mandal, son of late Bedu Mandal, resident of village-Raksha, P.S. Rajaun, District- Banka

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Secretary, Rural Works Department, Government of Bihar, Patna
4. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna
5. The Chief Engineer, Rural Works Department, Government of Bihar, Patna
6. The Superintending Engineer, Rural Works Department, Works Circle, Aurangabad.
7. The Executive Engineer, Rural Works Department, Works Division, Jehanabad
8. The Commissioner, Magadh Division, Gaya
9. The District Magistrate, Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
For the Respondent/s : Mr. Kumar Alok -SC7
Mr. Satyeshwar Prasad, AC to SC-7

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 07-05-2024

Heard Mr. Ramakant Sharma, learned Sr. Counsel for
the petitioners assisted by Mr. Rajesh Kumar, Advocate, and Mr.



Kumar Alok, learned SC-7 assisted by Mr. Satyeshwar Prasad, AC to SC-7.

2. The petitioners have filed the present writ petition for quashing the order contained in Memo No.8082 dated 20.07.2018 issued under the signature of respondent No.4, namely, the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna who has rejected the representation of the petitioners and has not considered the order passed in CWJC No. 15321 of 2015.

3. Learned counsel for the petitioners submits that petitioners nos. 1 to 7 were working on the various posts as daily wagers and they are regularly discharging their duties since last more than 27-32 years. They were initially engaged under Hazaribagh Circle in the Public Works Department and posted at Chas Sub-Division under Dhanbad Division and working there since 1986 and, thereafter, Dhanbad division was shifted to Jehanabad for executing road construction work and accordingly services of petitioners were transferred to newly created Jehanabad division in the year 1986 to execute the work of road construction in Naxal affected area and without any interruption, they were discharging the assigned work up to April 2013 and in this way, they continued to work for approx



29 to 30 years, and from the initial date of appointment they were receiving daily wage payment and discharged their duty without any break.

4. Learned Sr. Counsel for the petitioners further submits that the petitioners have filed CWJC No. 9906 of 1997 for a direction to pay them an equal salary as well as to regularize their services. The said writ petition was disposed off vide order dated 22.09.1998 wherein, the State government filed a counter affidavit stating therein that all the daily wages workers who were engaged prior to 01.08.1985 are going to be regularized. But the respondent did not take any decision, thereafter, the petitioners preferred CWJC No. 8152 of 1999 which was disposed of vide order dated 17.01.2005 with a direction that the State Government should decide about the regularization/absorption of the petitioners in terms of the resolution of the State Government bearing No. 5940 dated 18.06.1993 within a period of three months from the date of receipt/production of a copy of the order as they were working for more than 29-32 years.

5. Learned Sr. Counsel for the petitioner further submits that the petitioners have also filed L.P.A. No. 306 of 2005 which was disposed of vide order dated 22.06.2005 with a



direction to the respondents to take a final decision about the absorption/regularization of the petitioners in the light of the resolution of the State Government bearing resolution No. 5940 dated 18.06.1993 within a period of two months from the date. Thereafter, the respondent authorities except for preparing a gradation list of daily wagers, working in the Rural Works Department, within Gaya Circle (now Aurangabad) did nothing compelling the petitioners to file CWJC No. 3009 of 2010. The said writ petition was filed for a direction to the respondents to take a final decision for regularization/appointment of the services of the petitioners in terms of the policy decision of the government. The said writ petition was disposed of with a direction to the respondents to fill up sanctioned vacant posts against which persons are working on daily wages in accordance with law within a maximum period of six months from the date of receipt/presentation of a copy of this order before them after which daily wage appointments against sanctioned vacant posts shall cease.

6. Learned counsel for the petitioner further submits that the petitioners have also preferred MJC No. 1291 of 2012 which was disposed of vide order dated 21.08.2013. During pendency of MJC No. 1291 of 2012, the salary of the



petitioners has been stopped w.e.f. from April 2013 and it has been informant by the respondent authorities to the petitioners that steps were going to be taken to regularize their services and for that purpose, advertisement is going to be circulated to absorb their services in the regular establishment. Subsequently, in terms of the undertaking given in the M.J.C. No. 1291 of 2012, Advertisement No. 1/2013 was published by the District Magistrate, Jehanabad on 31.08.2013. The petitioners applied in pursuance to the advertisement which was accepted, but later on, their candidature was cancelled stating that there is no provision of granting age relaxation to the petitioners. The said decision of the government was challenged before the Hon'ble Court in CWJC No. 11814 of 2014, but since the issue raised by the petitioners in CWJC No. 11814 of 2014 is mostly the same and similar thus petitioners withdrew the said petition on 18.08.2017 to raise all issues in CWJC No. 15321 of 2015. Paragraphs Nos. 6, 7, and 8 of the judgement passed in CWJC No. 15321 of 2015 are as under :-

“6. Whether petitioners’ case is similarly situated as that of writ petitioners of C.W.J.C.No. 9441 of 2016, is an issue which has to be considered by the respondent authorities themselves. Petitioners, therefore, in view of the prayer made by the learned Senior counsel, petitioner would be at liberty to agitate their



grievance before the respondent authorities bringing to their notice that their case is similarly situated to that of the petitioners of the aforesaid writ petition, which would be considered by the respondent authorities.

7. The writ petition is disposed of with observation that if the petitioners approach the respondent authorities for redressal of the aforesaid grievances, the same would be considered by them by a reasoned and speaking order within a period of three months from the date of receipt/production of a copy of this order.

8. It goes without saying that Office order dated 9.4.2013, passed by the Superintending Engineer, Rural Works Department, Works Circle, Aurangabad, shall not come in the way of respondents in taking final decision in light of the order of this Court.”

7. Learned Sr. Counsel for the petitioners further submits that he has filed a representation before the authority again in the light of the observation made in CWJC No. 15321 of 2015 in which liberty was granted to the petitioners to file representation and direction was given to the respondent authorities to pass a reasoned and speaking order. In this background, the order impugned which is Annexure-1 to the writ petition has been passed. Learned Sr. Counsel for the petitioners further submits that at the time of passing the final order, the claim of the petitioners has been rejected on the ground that in the Court's order, there is no specific direction for relaxation of age, has been made, but there was only relaxation



in age and weightage of past working experience has been directed to be considered and as such, the claim of the petitioners have been rejected. Such rejection is bad in law and therefore, the order impugned dated 20.07.2018 contained in Memo No. 8082 (Annexure 1-A to the writ petition) requires to be quashed.

8. Learned counsel for the State on the other hand submits that the latest decision with regard to the appointment of the Class IV employees has come in the case of *Kapil Kumar and Ors vs. the State of Bihar and Ors.* passed in CWJC No. 18612 of 2019 and other analogous cases (annexed as Annexure R2/B to the supplementary counter affidavit filed on behalf of respondent No.2) in which it has been directed to the respondents to restrain himself from adopting any other method of selection and appointment of Class IV posts in Collectorate and its attached offices and direction was made to frame a rule. Learned counsel for the State further submits that in compliance with the said order, the State Government came forward with a Rule, namely, “बिहार कार्यालय परिचारी/परिचारी (विशिष्ट) (भर्ती एवं सेवा शर्त) नियमावली, 2023” which has been notified on 22.09.2023. In the light of the judgement rendered in the case of *Kapil Kumar (supra)* decided on 18.12.2019, the State



Government has come up with a rule and according to this rule, every appointment has to be made. Hence, there is no scope for grant of any relief to the petitioners. He further submits that there are a total of seven petitioners and out of seven, five petitioners have already crossed the age of superannuation and as such, this present case for regularization of the petitioners has become infructuous. Learned counsel for the State concludes his argument by submitting that in the order there was no direction for relaxation of the educational qualification and therefore, the case of the petitioners has rightly been considered by the State officials.

9. After going through the pleadings of the parties and hearing them, particularly upon perusal of two documents that are very much relevant in the opinion of this Court, it transpires that in the impugned order itself, it has been acknowledged by the respondents No.4, the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna, that the relaxation of age and experience of work has been directed to be considered, but there is no specific direction with regard to relaxation of age and qualification has been made. This Court is also of the view that the age, and qualification for appointment have changed from time to time and when this Court has expressed his view



that consideration of work experience has to be considered meaning thereby the relaxation of education qualification for those persons having experience of working has also been relaxed. Grant of permission considering the working experience automatically covers the relaxation of age because the petitioners who were working prior to a change of the educational qualification definitely have lesser qualifications but direction was made to consider their work experience, shall automatically mean that the Court has relaxed his education qualification.

10. This Court after going through the rules of 2023 for an appointment has also gone through the saving clause which is present in Rule 13 which states as follows;

“13. निरसन एवं व्यावृत्ति। (i) इस सम्बन्ध के संबंध में पूर्व में अधिसूचित बिहार समूह 'घ' (भर्ती एवं सेवा शर्त) नियमावली, 2010 (समय-समय पर यथासंशोधित) [बिहार कार्यालय परिचारी / परिचारी (विशिष्ट) (भर्ती एवं सेवा शर्त) नियमावली, 2010 के रूप में पुनर्नामित] तथा स्थानिक आयुक्त कार्यालय, नई दिल्ली समूह 'घ' संवर्ग (भर्ती एवं सेवा शर्त) नियमावली, 2016 (समय-समय पर यथासंशोधित) [स्थानिक आयुक्त कार्यालय, नई दिल्ली कार्यालय परिचारी/परिचारी (विशिष्ट) संवर्ग (भर्ती एवं सेवा शर्त) नियमावली, 2016 के रूप में पुनर्नामित] तथा समय-समय पर पूर्व में निर्गत संकल्प/नियमावली/आदेश आदि एतद् द्वारा निरसित समझे जायेंगे। परन्तु, किसी न्यायिक आदेश के अनुपालन में पूर्व की नियमावलियों के तहत आरम्भ की गई नियुक्ति की कार्रवाई, यदि अनिष्पादित हो, तब उसे पूर्व की नियमावलियों के तहत निष्पादित किया जा सकेगा।

(ii) ऐसे निरसन के होते हुए भी पूर्व में निर्गत



संकल्प/नियमावली/आदेश आदि के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए किया गया कोई कार्य या की गई कोई कार्रवाई इस नियमावली द्वारा या इसके अधीन प्रदत्त शक्ति का प्रयोग करते हुए किया गया समझा जायेगा, मानो यह नियमावली उस तिथि को प्रवृत्त थी, जिस तिथि को ऐसा कोई कार्य या ऐसी कोई कार्रवाई की गई थी।”

11. After a bare reading of Rule 13, it transpires to this Court that the judicial orders have been saved by Rule 13.

12. In this view of the matter, this Court is of the firm view that the order impugned is defective and therefore, sets aside the order dated 20.07.2018 contained in Memo No. 8082 (Annexure 1-A to the writ petition) hereby sets aside. The respondent No.4, namely, the Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna is directed to pass an order afresh with regard to the petitioners within 90 days. The date of 90 days shall be counted from the date of the end of the election.

13. The writ petition stands allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	09/05/2024
Transmission Date	NA

