

(2001) 09 PAT CK 0077**Patna High Court****Case No:** CWJC No. 7153 of 2000

Triveni Mahto

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 4, 2001**Citation:** (2005) 4 PLJR 505**Hon'ble Judges:** Narayan Roy, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Narayan Roy, J.

Heard counsel for the parties. Both these writ applications have been heard together as identical questions of facts and law are involved and, therefore, they are being disposed of by this common order.

2. By both these writ applications the petitioners have challenged order dated 24.6.2000 vide memo No. 655 as contained in Annexures 10 and 1 whereby and whereunder absorption/appointment of the petitioners as Work Charge employee under the Work Charge Establishment, has been cancelled.

3. It is submitted by learned counsel for the petitioners that the petitioners of C.W.J.C. No. 7559 of 2000 were engaged on daily wage in the year 1981 whereas petitioner of C.W.J.C. No. 7153 of 2000 was engaged on daily wages with effect from 1.5.1985 and they were allowed to function on daily wages basis as the work discharged by them was perennial in nature. It is further submitted that during continuance of the petitioners under the respondents on daily wages, their cases were considered for their absorption in work charge establishment as the nature of work was found to be perennial vide orders as contained in Annexures 3, 5 and 5/A respectively dated 24.1.1996 and 6.10.1996 and after their absorption as work charge employees, they continued in service and they were getting their regular

salary. However, in the meantime, vide order as contained in Annexure 10 and 1 respectively their absorption/appointment as work charge employees has been cancelled saying that their absorption/appointment has been found to be in contravention of resolution of the Finance Department No. 6394 dated 23.10.87 without even giving them an opportunity of being heard.

4. Learned counsel for the petitioners, therefore, submitted that since the petitioners were engaged on daily wages prior to 23.10.1987 and particularly when they were engaged with effect from 1.5.1983 and 1981 respectively their absorption/appointment under work charge establishment was not contrary to resolution of the finance department as referred to above dated 23.10.1987.

5. A counter affidavit has been filed on behalf of the respondents stating therein that absorption/appointment of the petitioners were found to be contrary to a circular of the finance department No. 6394 dated 23.10.1987 and, therefore, their absorption/ appointment as such was found illegal and the same was cancelled.

6. Learned counsel for the petitioners submitted that the questions involved in these writ applications are no more res integra as the same has been settled by this Court in C.W.J.C. No. 6212 of 1999 and the order of the learned Single Judge has been upheld by a Division Bench in L.P.A. No. 1573 of 2000. Xerox copies of the orders passed by this Court have been produced before this Court for my perusal.

7. It is not in dispute that the petitioners were working under the respondents with effect from 1.5.1985 and 1981 respectively on daily wages. It is also not in dispute that the works discharged by the petitioners were found to be perennial in nature. It is also not in dispute that the petitioners were absorbed as against the vacancies under work charge establishment on permanent basis and as against a scale by notifications as contained in Annexures 3, 5 and 5/A respectively. From the pleadings of the parties, it is also not in dispute that their engagement under the respondents was prior to the resolution of the finance department of 1987 as referred to above.

8. The only plea which has been taken by the State in the counter affidavit is that the petitioners had not completed 240 days in continuous service which was required as per government resolution No. 5349 dated 18th June, 1985 and, therefore, in no way they should have been absorbed/appointed against the vacancies of work charge establishment.

9. It appears that this Court, faced with the similar situation, disposed of C.W.J.C. No. 6212 of 1999 holding that since the writ petitioners were engaged from before the finance department's resolution No. 6394 dated 23.10.1987 came into existence, the same was not applicable as their initial engagement was prior to the said resolution. It was further held that in such circumstances when the writ petitioners were absorbed/appointed against the vacancies of work charge establishment there was no necessity of any show cause notice as their absorption was not violative of

the resolution of the finance department as referred to above and ultimately held that cancellation of the absorption of those writ petitioners was wholly without jurisdiction and accordingly the order of cancellation was set aside and they were directed to be reinstated with all consequential benefits. The order passed by the learned Single Judge was challenged in L.P.A. by the State of Bihar which, however, was dismissed after hearing the parties. The issue which is to be decided in this writ application is identical to that of C.W.J.C. No. 6212 of 1999. I have already noticed above that the petitioners were engaged prior to the resolution of the finance department dated 23.10.87 and they had even completed even more than 240 days prior to the notification of the finance department of 1987 as referred to above. I have also noticed above that the petitioners since were working under the respondents for a work, which was perennial in nature were absorbed against the vacancies of work charge establishment w.e.f. 1996 itself. The action of the State authorities, in that view of the matter, whereby and whereunder their absorption/appointment has been cancelled, must be held to be arbitrary, unreasonable and discriminatory. For the reasons aforementioned, these writ applications are allowed and the orders as contained in Annexures 10 and 1 respectively are set aside and the petitioners are reinstated in service with all back wages. However, no order as to costs.