
(2003) 03 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2609 of 2002

Gaur Biswas and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 599

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

**Advocate : S.B. Gadodia, Sumeet Gadodia and B.P. Mishra, for the Appellant;
A.K. Sinha, AG and M.K. Sinha, JC to AG, for the Respondent**

Judgement

M.Y. Eqbal, J.—The petitioner's pray for issuance of an appropriate direction upon the respondents to consider their cases for payment of arrears of salary from May, 1999 and January, 2000 till date and further to consider their cases for absorption/ conversion in regular/permanent establishment from work charge establishment.

2. Petitioner's case is that they were appointed in 1980 and 1985 as toll guard and toll clerk on Muster roll in the Road Construction Department. In the year, 2000 they were transferred by the Chief Engineer, NH Section, Bihar, Patna from Biharsharif to NH Division No. 1, Dhanbad. After joining the petitioners were posted in NH Division, Dhanbad on 11.1.2001. Thereafter petitioner No. 1 filed a representation for payment of salary. It is contended that the Executive Engineer, vide letter dated 20.6.2001 requested the Superintending Engineer for allotment of funds for payment of salary to the petitioners. The petitioners filed several representations to the Executive Engineer who, in turn, requested the Engineer-in-Chief and the Chief Engineer for allotment of funds but till date salary has not been paid to the petitioners.

3. In the counter affidavit filed by the respondent it is stated that various works are taken up under various schemes sanctioned by the Government to be

executed by the National Highway for which fund is allotted it terms of the tenders and the agreement. It is contended that 1.5% of the amount allotted for the work is provided for payment of salary of the work charged workers. The respondents further case is that although the petitioners were transferred to NH Division, Dhanbad but there is no work in the NH Division, and, therefore, there has been no allotment of funds for payment to the work charged employees. According to the respondents the conversion in regular/permanent establishment of the work charged employees is prohibited till the decision of the Government of Jharkhand as per letter dated 14.9.2002.

4. A supplementary counter affidavit has also been filed on behalf of the Commission and the Secretary, Road Construction Department, Government of Jharkhand in which it is stated that the petitioners were earlier engaged for temporary purposes of collecting tolls in NH Division, Bihar Sharif. They were to be paid salary for 1.5% of the total collection done departmentally. It is contended that the petitioners were appointed for a particular purpose of collecting tolls and since the collection of toll has come to an end, they are not entitled to be regularized in service.

5. I have heard Mr. S.B. Gadodia, learned Sr. counsel appearing on behalf of the petitioners and the learned Advocate General.

6. It has not been disputed by the respondents that petitioner No. 1 was appointed in the year, 1980 and petitioner No. 2 was appointed in the year, 1985 in the Road Construction department and in the year, 1988 both the petitioners were absorbed in the work charge establishment. On 23.9.2000 these petitioners were transferred by the Chief Engineer, NH Section, Bihar, Patna from Bihar Sharif to NH Division No. 1, Dhanbad. After joining in Dhanbad the petitioners were posted in NH Division, Dhanbad vide letter dated 11.1.2001 issued from the office of the Executive Engineer, National Highway, Division, Dhanbad. After joining at Dhanbad the petitioners filed several representations for payment of salary and the Executive Engineer wrote several letter to the Chief Engineer and the Engineer-in-Chief for allotment of funds stating that two petitioners are continuing in service in NH Division, Dhanbad. The Superintending Engineer, vide Memo No. 399 dated 3.4.2002 sent the service records of the petitioners the Chief Engineer with recommendations to take necessary step for payment of salary. In spite of that the petitioners have not been paid their salary.

7. Taking into consideration the entire facts of the case I direct the respondents to release the salary to the petitioners atleast from the date when the petitioners joined the NH Division, Dhanbad i.e from November, 2000 till date if the petitioners have been actually working in the said Division. So far payment of arrears of salary for the period prior to November, 2000 is concerned, liberty is given to the petitioner to file representation before the Chief Engineer, NH Division, Bihar Patna who will do the needful in accordance with law. So far absorption of the petitioners from work charge establishment to Regular Establishment is concerned, I am of the view that since the petitioners have been

continuously working from 1980/1985, the respondents shall consider their cases for absorption/ regularization in services. The respondents shall release the arrears of salary as also the current salary if the petitioners have been working as expeditiously as possible and preferably within a period of six weeks from the date of production of a copy of this order. Within the said period the respondents shall also consider the cases of the petitioners for absorption/regularization in service.

8. With the aforesaid directions/observations this writ application is disposed of.