
(2023) 05 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20243 Of 2016, 5064, 13932 Of 2017, 5089, 6664, 7691, 7760, , 7890, 9237, 9322, 9804, 10605, 11533, 12518, 12756, 13476, 13586, 13726, 13895, 14337, 14619, 20837 Of 2018, 8964, 9149, 21407, 23748 Of 2019, 14558, 14723, 149

Shyam Kishore Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Citation : (2023) 05 PAT CK 0042

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Siyaram Pandey, S.Raza Ahmad, Bijoy Kumar Sinha, Amaresh Kumar Singh, Arvind Ujjwal, Shashi Shekhar Tiwary

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioners, Mr. S. Raza Ahmad learned AAG-5 assisted by Mr. Bijoy Kumar Sinha, learned AC to AAG-5 and Mr. Arvind Ujjawal, learned SC-4 for the State.

2. Since all these writ applications involve a common issue, on the request of learned counsel for the parties, these writ applications were tagged and have been heard together from time to time.

3. The petitioners in these writ applications are seeking regularisation of their service w.e.f. 11.12.1990 against the vacant Group 'D' posts. Their specific case is that they are covered under the Government's policy dated 16.03.2006, however, the earlier Committees which were formed to examine the case of the petitioners and others in the light of the judgment of this Court in CWJC No. 7359 of 2002 (Ram Tapeswar Sah and Others versus the State of Bihar and others) did not follow the policies as framed by the Government as a result of which these petitioners were arbitrarily left out.

4. When these writ applications were filed, the petitioners had challenged their respective order of termination as daily wagers but with the developments which took place in course of hearing of the writ application, the petitioners have been taken back in the establishment as daily wagers except the petitioner in CWJC No. 5963 of 2023. Thus, so far as their prayer for quashing of the order of termination is concerned, the same has become infructuous. They have joined and are rendering their services.

5. This Court has on earlier occasions passed some orders. Considering the nature of dispute and the issues involved in these writ applications, this Court deems it just and proper to reproduce the order dated 23.02.2023, order dated 03.04.2023, order dated 04.04.2023, order dated 06.04.2023, order dated 07.04.2023, order dated 10.04.2023 and order dated 17.04.2023 as under:-

Order Dated 23.02.2023

"Heard learned counsel for the writ petitioners in all these matters. Also heard Mr. S. Raza Ahmad, learned AAG-5 and Mr. Arvind Ujjwal, learned SC-4 assisted by their Assisting Counsel Mr. Bijoy Kumar Sinha and Mr. U.P. Singh respectively for the State.

What has ultimately transpired from the discussions at the Bar that the Public Health Engineering Department, Government of Bihar through its authorities are indulging in passing conflicting orders in the matter of regularization of the daily wagers under the policy decision of the government as contained in Resolution No. 639 dated 16.03.2006. In all these matters, the petitioners are the daily wagers who were engaged in the different establishments/work of the Public Health Engineering Department prior to the cut off date i.e. 11.12.1990.

Learned counsel for the petitioners in CWJC No.20837 of 2018 has relied upon a judgment of the Hon'ble Division Bench in the case of Ram Tapeswar Sah & Ors. Vs. State of Bihar and others and other analogous matters reported in 2006(3) PLJR 376 wherein, in paragraph '8' the stand of the State in its counter affidavit has been recorded. This Court would reproduce paragraph '8' of the said judgment as under:-

"8. A reply to the counter affidavit has also been filed, but when the matter was finally heard on 10.05.2006, learned Additional Advocate General-II, on behalf of the respondent-State Government made the following submissions;

(a) The Government has taken a policy decision dated 16.03.2006 that any employee of Class IV having been appointed and having completed 240 days working as a daily wager prior to 11th December, 1990 shall be entitled to be considered for regularization in the Public Health Engineering Department.

(b) The work charge employees of Class III and IV who have been reverted to the status of daily wagers will be also entitled to be considered for the purpose of benefit of the said decision for regularization.

(c) The case of the petitioners who are fulfilling the eligibility criteria as per the aforesaid policy will be considered and finalized on or before 30th September, 2006 and the inter-se seniority will be fixed on the basis of the initial entry in the work or service.”

One of the grievances of the petitioners is that despite the undertaking given before this Court that the case of the petitioners who are fulfilling the eligibility criteria as per the policy will be considered and finalized on or before 30th September, 2006 and the inter-se seniority will be fixed on the basis of the initial entry in the work or service, the department never abided by the said undertaking and considered the cases of the eligible candidates taking into consideration their date of birth. This was in clear breach of the undertaking contained in the affidavit of the department and this has resulted in huge discrimination inasmuch as the persons who were working in the year 1982 were not regularized whereas the persons who started working in the year 1988 got regularized.

Learned counsel for the petitioners in CWJC No.11533 of 2018 has placed before this Court a report of the Three Men Committee as contained in Annexure- '26' of the rejoinder to submit that as back as on 20.08.2015, the said Committee was constituted to consider the cases of the eligible candidates in the light of the policy decision of the government. The said Committee noted that 2277 new posts were created in the department with an intention to absorb the daily wagers. The Committee further found that against the said sanctioned post 1884 daily wagers had already been absorbed and against rest of 393, presently engaged 224 daily wagers are being considered for absorption. Learned counsel points out from the materials available on the record that against 224 daily wagers, 144 were in the divisions and whether they may be adjusted or not, on this point the Committee expected a guideline from the General Administration Department, Government of Bihar. It appears that the General Administration Department, however, left it for the Administrative Department to take a view thereon.

Learned counsel for the petitioners submits that from Annexure- '13' and '14' of the writ application which are judgments of this Court in CWJC No.692 of 2017 and in CWJC No. 20170 of 2016 it would appear that on earlier occasion also the petitioners and the persons similarly situated to the petitioners had occasion to come to this Court raising their grievances and this Court had directed the respondents to consider their cases in the light of the government's policy because they were engaged prior to the cut off date i.e. 11.12.1990.

It is submitted that instead of considering their cases for regularization in terms of the government's policy, the engagement of the petitioners has been terminated on a completely vague and misconceived ground giving an impression as if they are the appointees of the period after the cut off date i.e. 11.12.1990.

Learned counsel has further pointed out that similarly situated persons namely

Umesh Mandal, Md. Abdul Karim and Dinesh Kumar Singh had moved this Court in CWJC No.20170 of 2016, CWJC No.4855 of 2017 and CWJC No.12030 of 2017. They alleged that on the one hand they have not been regularized in terms of the government's policy but they have been removed from service under the order of the Executive Engineer. A learned coordinate Bench of this Court having noticed the entire facts and circumstances quashed the order of termination bearing memo no.640 dated 18.07.2017, memo no.641 dated 18.07.2017 and memo no.642 dated 18.07.2017 in the respective writ applications and respondents were directed to pass appropriate orders for regularizing the services of those petitioners with effect from the date the other 43 panelists had been regularized and such orders were required to be issued within a period of six weeks. Learned counsel submits that being aggrieved by the judgment of the learned writ Court, the State of Bihar preferred LPA No.951 of 2018, LPA No.952 of 2018 and LPA No.953 of 2018 which were ultimately dismissed vide order dated 11.09.2019.

All the three petitioners came to be reinstated in service.

Learned counsel further submits that the order of the Hon'ble Division Bench was subject to challenge in Special Leave to Appeal (C) No. 3712 of 2021 which was also dismissed.

In the aforementioned background of the cases, learned counsel for the petitioners submits that the order of termination of the engagement of these petitioners are liable to be quashed and their cases be also considered keeping in view the policy decision of the government as contained in resolution no.639 dated 16.03.2006 and the various decisions of this Court rendered from time to time in the matters of similarly situated persons.

Without going into the contention of the State at this stage, one thing which is evident from the records is that because the department has not followed the Bihar Litigation Policy and they have not considered the similarly situated cases in like manner, the litigations have cropped up over the period. Instead of passing consistent orders in case of similarly situated persons, different authorities have passed conflicting orders at different stages and now it has been left for this Court to resolve the issue.

Mr. S. Raza Ahmad, learned AAG-5 and Mr. Arvind Ujjwal, learned SC-4 both have given this Court to understand that they will discuss this matter with the Principal Secretary of the Department within one week from today and they will find out a modality as to how all these cases be reconsidered and an appropriate view be taken consistent with the policy decision of the government and the judicial pronouncements on the subject.

This Court, as a measure of last resort is granting four weeks time to the State. Within one week from today, the Principal Secretary, P.H.E.D. shall discuss the matter with the learned AAG-5 and SC-4 or with any other learned counsel and draw a modality as to how he wishes to resolve this situation. Thereafter, the exercise required in respect of these writ petitioners be taken up expeditiously

and a resolution be reached subject to result of these writ applications within a period of three weeks thereafter.

Such report showing exercise in the matter of all these petitioners would be placed before this Court with an affidavit well before the next date of listing.

List these cases on 28.03.2023 under the same heading maintaining their position.”

Order Dated 03.04.2023

“Since the copy of the counter affidavit has been served upon learned counsel for the petitioners only today, a prayer for pass over has been made.

Learned counsel(s) for the petitioners have submitted that they are not required to file any rejoinder to the counter affidavit.

As prayed, let these cases be passed over.”

Order Dated 04.04.2023

“These writ applications have been taken up together for consideration.

Yesterday, this Court recorded in the order that learned counsel(s) for the petitioners have submitted that they are not required to file any rejoinder to the counter affidavit.

In course of hearing today, it transpired that the said statement was made by Mr. Siyaram Pandey, learned Advocate appearing in CWJC No. 11533/2018. The fact is that the copy of the counter affidavit has not been served on all the learned counsel(s) representing the petitioners in their writ applications. They have submitted before this Court that in such circumstance it would not be in the interest of justice to shut them out from filing a rejoinder to the counter affidavit. This Court agrees with the submission.

Mr. S. Raza Ahmad, learned AAG-5 and other learned counsel for the State undertake to serve copy of the counter affidavit on learned counsel(s) for the petitioners in all the writ applications by tomorrow.

Mr. S. Raza Ahmad, learned AAG-5 has drawn the attention of this Court towards the statements made in the second supplementary counter affidavit filed on behalf of respondent no. 2, 5 to 8. In paragraph ‘28’ of the said affidavit the following statements have been made :-

“28. That considering the long engagement of the petitioners as a daily wager employee, the department proposes to continue them as a daily wager employee till their age of retirement. In the year 2018, the services of 217 daily wager employees have been terminated. Out of 217 daily wager employee, 181 daily wager employees have not attained the age of superannuation, hence, they can be continued as a daily wager employees till their age of retirement.”

Learned AAG-5 submits that in view of the stand taken in paragraph '28' of the affidavit a consequential order shall be issued within next two days and the 181 daily wager employees who have not attained the age of superannuation shall be taken back on work. In this view of the matter, this Court directs the competent authority to issue the consequential order by 06.04.2023 and allow all such daily wager employees to resume their work. The issue of their termination and the consequential reliefs which may be allowed to them for the interregnum period shall be subject to result of these writ applications.

Learned AAG-5 has submitted that in compliance of the order dated 23.02.2023 passed by this Court, a detail discussion took place with the Principal Secretary, P.H.E.D. The minute of the meeting presided over by the learned Advocate General has been brought on record as Annexure 'R' to the second counter affidavit.

Perusal of Annexure 'R' would show that it contains information under three heads:

- (1) Whether the petitioners in each of the writ applications possessed requisite eligibility as per the relevant policy;
- (2) whether the name of petitioners appear in the seniority list; and
- (3) The reasons for their not having been absorbed.

As regards the thirty (30) petitioners in CWJC No. 11533/2018 all the three columns have been shown against them, meaning thereby that they do not possess the requisite eligibility, their names do not find place in the seniority list and they have not been absorbed in want of availability of the posts.

As regards the other petitioners in the other writ applications, the first two columns have been shown in positive, meaning thereby that they possessed requisite eligibility and their name appeared in the seniority list but they could not be absorbed due to non-availability of posts. Exceptions to this class of the petitioners are (1) Sudhesh Jha in CWJC No. 9322/2018, (2) Jitendra Kumar Yadav in CWJC No. 12020/2018 and (3) Md. Kamruddin in CWJC No. 12756/2018 about whom it has been stated that they did not possess requisite eligibility and their names do not appear in the seniority list.

What transpires from the chart enclosed with the minutes of the meeting (Annexure 'R') is that most of the petitioners who are eligible and whose name appear in the seniority list could not be absorbed in want of availability of posts.

Learned counsel for the petitioners in CWJC No. 20837/2018 (Dina Nath Jha & Ors. Vs. The State of Bihar and Ors.) as also in CWJC No. 9149/2019 (Bhuneshwar Chaudhary Vs. The State of Bihar and Ors.) have strongly contested this information furnished in the chart. Learned counsel for the petitioners have prima-facie shown from the averments made in the writ applications as also the enclosures thereto that the persons placed below in the

seniority list have been absorbed and in the Division such as Purnea Division there are still vacant posts. It is stated that two of the petitioners in CWJC No. 20837/2018 have attained the age of superannuation during pendency of this writ application. There are specific statements to this effect in paragraph '25' to the writ application and in support of the vacancy, learned counsel has relied upon Annexure '7' to the writ application. There is no denial to the same on the record.

Similarly Mr. Siyaram Shahi, learned counsel representing the petitioners in CWJC No. 9149/2019, CWJC No. 21407/2019 and CWJC No. 8964/2019 has submitted that these petitioners are present in the seniority list of the Munger Division. It is submitted that in the Munger Division also the vacancies are available and out of twenty eight (28), nine (9) vacancies are still there. It is submitted that there is no reason as to why the posts which were specially created to absorb the daily wagers like the present petitioners would not be filled up from amongst those whose names appear in the seniority list.

Mr. Gajendra Kumar Jha, learned counsel representing the petitioners in CWJC No. 9322/2018 submits that in his case the petitioner no. 1 and 5 have died during pendency of the writ application. They pertained to Madhubani Division and there also the vacancies exist.

In CWJC No. 11533/2018, Mr. Siyaram Pandey, learned counsel for the petitioners has contested the information furnished in the chart. It is submitted that as regards the thirty (30) petitioners only a vague statement has been made in the chart saying that they do not possess the requisite eligibility. It is his submission that the fact is that these petitioners are working as daily wagers since a period prior to 11.12.1990. Learned counsel further submits that as regards the availability of the vacancies in Gaya Division from where these petitioners come, it is stated in the chart that there is no vacancy for absorption, but the fact is that there are 26 vacancies as on 23.07.2018.

Learned counsel(s) for the petitioners have, therefore, jointly submitted that when it is an admitted position appearing from the records that all the 2273 posts which were created for absorption of the daily wagers in terms of the policy decision of the government have not been filled up then how the department can come with a statement that there is no available vacancy. It is also pointed out that what has been taken note of by this Court in it's order dated 23.02.2023 on internal page 10 (second paragraph) of the order have not at all been answered by the department.

Having heard learned counsel(s) for the petitioners, learned AAG-5 for the State and other learned counsel for the State, this Court deems it just and proper to take up these writ applications on day to day basis from 06th April, 2023.

To resolve the whole issue arising out in the present writ application, it would be necessary that the Divisional head of each of the Division of the P.H.E.D. assist the learned AAG-5 and other learned counsel and remain present with them with

the records containing all relevant information to answer the Court's query. The Court leaves it to the wisdom of learned AAG-5 to call the Divisional heads of at least four Divisions on a particular day as per his choice with the records and assist this Court.

It is stated that CWJC No. 3820/2022 (Rajeshwar Thakur Vs. The State of Bihar & Ors.) relates to the Health Department and is not to be heard as an analogous to these matters. Accordingly, CWJC No. 3820/2022 is de-tagged. List accordingly."

Order Dated 06.04.2023

"Pursuant to the order passed day before yesterday, Mr. S. Raza Ahmad, learned AAG-5 and Mr. Vijay Kumar Sinha, learned AC to AAG-5 together with the Executive Engineers of four divisions namely- Gaya, Purnea, Munger and Sheikhpura are present.

This Court has been informed that in compliance of the order of this Court which is in terms of the stand of the Department, the Department has come out with a Letter No. 3-1093/2018-387 under signature of the Principal Secretary, PHED. The daily wagers who were retrenched have been directed to be taken on work. The letter is addressed to all the Executive Engineers of the different divisions.

This Court expects that they will comply with the direction without any delay and no harassment shall be caused to the daily wagers while accepting their joining.

Mr. Raghvendra Kumar, Executive Engineer, Gaya Division has informed that in the year 2006, 2277 posts were created for purpose of absorption, 50 posts were meant for Gaya Division and all the 50 posts were duly filled up in accordance with the policy decision.

Mr. Siyaram Pandey, learned counsel for the petitioners in CWJC No. 11533 of 2018 does not dispute this position.

Mr. Anil Kumar, Executive Engineer, Purnea (Mechanical Division) has informed that for the Mechanical Division, Purnea, 61 posts were created out of which 50 posts were filled up and presently 11 posts are available.

Mr. Avi Ranjan, Executive Engineer, Munger Division has informed that 28 posts were meant for Munger Division out of which 23 posts were filled up and presently 5 posts are available.

Mr. Ravi Prakash, Executive Engineer, Sheikhpura Division has informed that 52 posts were created for this division out of which 50 posts were filled up. According to him, 2 posts were meant for the backward class women but there being no suitable candidate from the said class, those two posts remained vacant.

Let these matters be passed over for the day."

Order Dated 07.04.2023

"Today four Executive Engineers from different Divisions have furnished the information with respect to their respective Divisions.

Mr. Chandra Bhushan, Executive Engineer, P.H. Division, Samastipur has informed that out of 43 posts, 36 persons were absorbed. The seven posts remained vacant. Out of these 07 posts, 05 belong to Scheduled Castes and 02 belong to Backward Class women. Since there was no candidate in the seniority list from amongst these categories, the posts remained vacant.

At this stage, Mr. Siyaram Pandey, learned counsel for the petitioners in some of the writ applications rose to submit that the statement given by the Executive Engineer is not correct. He has placed before this Court a copy of the Judgment dated 12.12.2022 passed in CWJC No. 11799 of 2018 (Binod Ram and Ors. Vs. the State of Bihar & Ors.) to submit that Binod Ram happened to be a candidate from Scheduled Castes Category and his name appears in the seniority list of Samastipur Division. There are other three persons who were petitioners in the said writ petition and they belong to Scheduled Castes. It is submitted that this Court is being misled by saying that there is no candidate in the seniority list from amongst the Scheduled Castes Category. Learned counsel further submits that despite the direction of this Court vide Judgment dated 12.12.2022 in CWJC No. 11799 of 2018, the petitioners have not been taken back. The Executive Engineer, Samastipur initially made a statement that they have been taken back but very soon, he realised that his statement may not be correct, therefore, he has submitted that in this regard he will make statement by 2:15 P.M. today. Mr. Subodh Shankar, Executive Engineer, Darbhanga has informed that 54 posts were created for this Division out of which 52 posts were filled up. The two remaining posts belong to the unreserved female, since there is no candidate from unreserved female, the posts remained vacant.

Mr. Vivek Kumar, Executive Engineer, Patna (East) has informed that 55 posts were created out of which 53 posts were filled up and two posts belonging to Backward Class female have remained unfilled in want of candidates. Mr. Siyaram Pandey, learned counsel has once again brought to the notice of this Court that in Patna (East) the order of this Court is not being complied with and the poor persons are being harassed. In this connection, he has brought to the notice of this Court the order dated 21.11.2022 passed in CWJC No. 12931 of 2018 which has given rise to a contempt proceeding being MJC No. 875 of 2023. The Executive Engineer (East) has undertaken to furnish complete information in this regard after verification of records. He has ensured that the order will be complied with immediately.

Mr. Abhijeet Kumar, Executive Engineer, Patna (West) has informed that out of 97 posts, candidates for 92 posts were recommended but ultimately only 90 could join. The remaining 7 posts could not be filled up because out of these 07 posts, 1 post is meant for unreserved, 1 post is meant for Scheduled Castes, 2 posts are meant for Scheduled Tribes and 3 posts are meant for Backward Class Female and in either of these categories, there is no suitable candidate.

In course of hearing today, Mr. Lalan Kumar Singh, learned Advocate has placed before this Court a copy of the order dated 16.09.2019 passed in CWJC No. 16866 of 2011 to submit that despite the direction of this Court to consider the claim of the petitioners, the respondents have not considered their claim and they have been compelled to file a contempt application being MJC No. 231 of 2020.

Mr. Vivek Kumar, Executive Engineer, P.H. Division Patna (East) who is present in Court has taken note of it and will inform this Court about the action taken pursuant to the direction of this Court as mentioned above.

Learned counsel has further pointed out that two persons whose name appeared in the seniority list of Patna (East) Division namely Raghunath Ram and Suryadev Prasad who belong to Scheduled Castes and Backward Class category respectively have been absorbed in the year 2017 during pendency of the contempt application in Bihar Sharif, P.H. Division. It is submitted that in fact from the minute of the meeting itself it will appear that for purpose of absorption, no care has been taken that a particular employee be absorbed in the same category in which he was working. In case of availability of post in any other category his candidature has been considered for absorption. This has been brought to the notice of this Court to submit that the claim of the petitioners for absorption may be considered not only against the posts available in the respective Division and against the category of post on which they were working but they may also be considered outside the Division against any other category of post because this is what the respondents have done on their own.

Mr. Singh, learned counsel has further brought to the notice of this Court that in case of Chapra Division in the matter of Surendra Singh and Others versus State of Bihar and Others, they were absorbed after de-reserving the posts which had remained vacant due to non-availability of the candidates under the reserved category.

At 2:15 P.M., the Executive Engineer, P.H. Division, Samastipur appeared with Mr. S. Raza Ahmad, AAG-5 and submitted that the consequential order reinstating Binod Ram and Others has been issued.

The matter will continue on Monday when information with regard to other Divisions shall be furnished to this Court.

In the meantime, it is expected that the orders which are being recorded by this Court are duly discussed with the Principal Secretary of the Department for arriving at further conclusions. List these matters on Monday i.e. 10.04.2023."

Order Dated 10.04.2023

"Heard learned counsel for the petitioners, Mr. S. Raza Ahmad, learned AAG-5 assisted by Mr. Bijoy Kumar Sinha, learned counsel and Mr. Arvind Ujjwal, learned SC-4 for the State.

In course of today's submissions, this Court has been informed by Mr. Vivek Kumar, Executive Engineer, Patna (East) that the order dated 21.11.2022 passed in CWJC No. 12931 of 2018 has been complied with.

Mr. Kumar Pradeep, Executive Engineer from Nawada P.H. Division has informed that there were 51 posts created at Nawada, out of which 29 posts were filled up. As on today, according to him, 22 posts are still vacant. In these 22 posts, 08 posts are for Scheduled Castes, 09 posts are for E.B.C. and 02 posts are for Backward Class (Female).

Mr. Pawan Kumar, Executive Engineer, Buxar has informed that 35 posts were created out of which 30 posts have been filled up and 05 posts remained vacant. He has further informed that in Buxar P.H. Division all persons in the seniority list have been absorbed. Out of the 05 remaining posts, 01 is for Scheduled Castes, 01 for O.B.C. (Female) and 03 are for Unreserved category.

Mr. Ali Haider, Executive Engineer, Jehanabad has informed that out of 32 posts, 20 posts have been filled up leaving behind 12 posts but all in the seniority have been absorbed in this Division. Out of 12 remaining posts, 02 are for Scheduled Castes, 01 for Backward Class, 03 for E.B.C., 01 for Backward Class (Female) and 05 for Unreserved category.

Mr. Kumar Arup, Executive Engineer, Ara has informed that out of 44 posts meant for this Division, 35 posts have been filled up leaving behind 09 posts. He submits that in the seniority only one candidate remains to be absorbed, he belongs to unreserved category but in Ara Division, out of 09 vacant posts, 06 are for Scheduled Castes, 02 for O.B.C (Female) and 01 for O.B.C. (Male).

After today's proceeding what has largely transpired may be summarized as under-

(i) The second supplementary counter affidavit which contains the minutes of the meeting held on 23.02.2023 in the Chamber of learned Advocate General itself records that 393 posts remained vacant due to unavailability of the posts as per reservation category.

(ii) The chart which has been brought on record is not correctly showing the reason for non-filling up of the available posts. This is said keeping in mind the undisputed fact that the Department has absorbed some of the candidates from one category to another category and instances have been placed before this Court to show that some of the candidates belonging to one P.H. Division have been absorbed in another P.H. Division.

(iii) From Annexure '4' to the second supplementary counter affidavit of the Respondent Nos.2, 5 to 8, it appears to be an admitted fact that the seniority list was prepared on the basis of the date of birth of the employees whereas in the case of Ram Tapeshwar Sah and Others Vs. the State of Bihar and Others reported in 2006 (3) PLJR 376, it was agreed by the State on affidavit that the inter-se seniority will be fixed on the basis of the initial entry in the work or

service.

It is evident from the records that this mandate of preparing seniority list as per date of entry in service has been completely breached and the undertaking given by the State in its counter affidavit in the case of Ram Tapeswar Sah has been violated as a result whereof those who were required to be placed above in the seniority list went down because of their later date of birth. This is not only prima-facie contemptuous but renders the whole exercise questionable.

Since the matter is well within the knowledge of the learned Advocate General and Mr. S.Raza Ahmad, learned AAG-5 is representing the State, this Court is of the opinion at this stage that if any of the daily wagers who was required to be absorbed as per his seniority has suffered what was due to him long back and as per the judgment in the case of Ram Tapeswar Sah, the petitioners would have been entitled for absorption, there is no reason why even at this stage they should not get benefit of that.

To cut short the matter, now this Court agrees with the submissions of learned AAG-5 that as respect other PH Divisions similar information may be obtained from the respective Executive Engineers and the same be placed on the record as also may be considered by the competent authority while taking an overall view of the matter.

Let the matter be discussed in wider perspective by the officials, an appropriate view be taken and informed to this Court.

List these matters on 17.04.2023 under the same heading maintaining their position."

Order Dated 17.04.2023

"Today, some affidavits have been filed on behalf of the State. Those are on the point as to how many vacancies are available in the concerned division of the Public Health Engineering Department (hereinafter referred to as the "PHED"). Affidavits have been sworn by the respective Executive Engineers of the Division. Let the same be taken on the record.

This Court has already summarized what has transpired from the records. In this connection, the order dated 10.04.2023 may be referred to.

In today's hearing, learned counsel for the petitioners have submitted that the Three Men Committee comprising the then Principal Secretary, Engineer-in-Chief and Chief Engineer (Mechanical) of the PHED acted contrary to the mandate of the order of this Court in CWJC No. 7359 of 2002 (Ram Tapeswar Sah and Others versus The State of Bihar and Others) and other analogous matters. It is submitted that these petitioners had also been before this Court and their cases are covered by the judgment in the case of Ram Tapeswar Sah (supra).

It is pointed out that in the case of Ram Tapeswar Sah (supra) and other analogous matters, by filing a reply to the counter affidavit, the learned

Additional Advocate General-II categorically submitted on behalf of the respondents- State Government that " the case of the petitioners who are fulfilling the eligibility criteria as per the aforesaid policy will be considered and finalized on or before 30th September, 2006 and the inter-se seniority will be fixed on the basis of the initial entry in the work or service..."

Learned counsel submits that the Hon'ble Division Bench accepted the affidavit, specifically referred the same in Paragraph '13' of its judgment and granted liberty to the petitioners to move the said Committee after it is approved by the government raising their grievances in accordance with law settled by the Hon'ble Supreme Court.

Learned counsel submits that in the aforementioned background, when the Committee considered the case of the petitioners, the Committee violated the affidavits filed on behalf of the respondent- State Government and instead of preparing the seniority list on the basis of an initial entry in the work or service, the said Committee chose to take the date of birth as the reckoning factor for purpose of preparation of the seniority list. Because of this, a person whose entry in service was much after another person got preference over that another person because he happened to be elder to him. Thus, by violating its own affidavit, the Committee created a problem for those who were required to be placed above in the seniority list considering their date of entry into service.

Learned counsel submits that for their willful disobedience to the order of this Court and the undertaking given before this Court in form of an affidavit, they are liable to be proceeded against by initiating a contempt of court proceeding. Learned counsel has placed before this Court a copy of the office order no. 66 dated 11.08.2012 issued under the signature of the Executive Engineer, PHED, Chapra. This office order would show that three employees namely Surendra Singh, Harendra Prasad Singh and Satrudhan Prasad Singh who belonged to backward class and extremely backward class were absorbed against the vacant posts which were for the Scheduled Castes and Extremely Backward Class (Female). On the strength of this office order, learned counsel submits that if persons similarly situated with the petitioners could be absorbed against the vacant posts by breaking the roster, there is no reason why the remaining unfilled posts which are still lying with the department cannot be filled up from amongst the petitioners. It is submitted that if the seniority of the petitioners should have been taken into consideration, they would have been placed much above the candidates who have been absorbed on the basis of their date of birth. Learned counsel for the petitioners in CWJC No. 11533 of 2018 has drawn the attention of this Court towards Annexure 'R/3' to the reply to counter affidavit filed on behalf of respondent nos. 1, 2 and 5 to 8. It is submitted that vide office Order No. 209 dated 14.08.2018, the Engineer-in-Chief-cum-Special Secretary, PHED, absorbed Umesh Mandal, Md. Abdul Karim and Dinesh Kumar Singh who were the employees of the Araria Division against the vacant posts in Biharsharif Division. It is submitted that the respondents have been doing this shifting from

one Division to another Division in the light of the orders of this Court, therefore, at this stage, it would not be fair on their part in taking a plea that the petitioners of a particular Division cannot be absorbed/adjusted against the vacancies of the year 2006 available in other Divisions.

The instances are on the record and those are speaking for themselves.

Mr. S. Raza Ahmad, learned AAG-5 and Mr. Arvind Ujjwal, learned SC-4 as also Mr. Bijoy Kumar Sinha, learned AC to AAG-5 have assisted this Court on behalf of the respondents. Mr. Raza, learned AAG-5 has though initially took a plea that the policy of the Government dated 16.03.2006 was not under challenge, therefore, the appointments made as per the said policy conditions is in accordance with law, however, having gone through paragraph '8' of the judgment of the Hon'ble Division Bench in which the submissions of learned Additional Advocate General- II based on the affidavit filed in the court on behalf of respondent State are contained, Mr. Raza, learned AAG-5 very soon realized that what was recorded in the affidavit and submitted before the Court was not followed.

At this stage, this Court requested learned AAG-5 to carry out an exercise as to whether the petitioners, from the date of their entry into the service would have been placed above the employees who have already been absorbed on the basis of date of birth. Mr. Raza, learned AAG-5 submits that he will instruct the Department to carry out such exercise and will revert to this Court with a report on this within a period of 10 days from today.

As prayed, list these cases on 28th April, 2023 under the same heading, maintaining their position.

On the said date, the learned AAG-5 will also inform this Court as to who were the officers in the Three Men Committee against whom it is alleged that they had prepared the seniority list on the basis of date of birth ignoring the date of entry into the service. On this point, learned counsel for the petitioners has shown to this Court that an Inquiry Report (Annexure '26') submitted by another Three Men Committee reveals that earlier Three Men Committee should have prepared the seniority list on the basis of the date of entry into the service which they had not done. This Court has made it clear to the learned AAG-5 that in ultimate analysis, if it is found that the Committee constituted in the light of the judgment of this Court in Ram Tapeswar Sah (supra) had willfully disobeyed the undertaking given before this Court in form of an affidavit and submission which form part of the judgment of this Court, this Court would consider instituting a contempt proceeding against them.

List accordingly."

Order Dated 28.04.2023

"An application has been filed on behalf of the respondents wherein it is stated that vide Memo No.435 dated 20.04.2023 a Three Men Committee has been

constituted presided by the Engineer-in-Chief-cum-Special Secretary, P.H.E.D. to submit a report in terms of the directions issued by this Court vide order dated 17.04.2023. The Committee has been directed to submit its report within one week. The subsequent developments have also been mentioned in the affidavit. In paragraph '5', it is stated that for preparing inter se seniority of the petitioners of batch cases in accordance with the date of entry in service proportionate to the employees who have been regularized in accordance with the inter se seniority on the basis of date of birth require vast exercise and a report is required to be sought from all the respective divisions of the Department and thereafter the Three Men Committee shall prepare a report with respect to inter se seniority of the petitioners.

In the aforesaid view of the matter, a prayer has been made to grant further two weeks time to complete the whole exercise and submit a report to this Court.

Let these cases be listed on 12.05.2023 under the same heading maintaining their position.

This Court has been informed that the petitioner Bushundeo Mishra in CWJC No.11184 of 2019 and the petitioner Ramesh Prasad Yadav in CWJC No.4812 of 2021 are covered by the earlier of this Court but they have not been taken back.

Let the respondents examine it and in case it is found that they are covered by the earlier of this Court, their joining be issued as early as possible."

6. Pursuant to the aforesaid directions issued by this Court, the respondents have taken up some exercise. Today, a third supplementary counter affidavit has been filed on behalf of respondent nos. 2 and 5 to 8. Paragraphs '7' to '16' of the third supplementary counter affidavit are being reproduced hereunder:-

"7. That it has already been stated in the application seeking extension of time for filing of second supplementary counter affidavit that in compliance of aforesaid direction vide Departmental Letter No. 95 contained in Memo No. 435 dated 20.04.2022 a three men committee has been constituted presided by the Engineer-in-Chief cum Special secretary, PHED Bihar consisting of Chief Engineer, North Bihar, PHED and Chief Engineer, South Bihar, PHED being the member of the committee to submit a report in terms of direction issued vide order dated 17.04.2023. The committee is directed to submit its report within one week.

8. That it has already been stated that vide Departmental Letter No. 449 dated 26.04.2023, the Joint Secretary, PHED made a communication to all the Executive Engineers of their respective divisions save and except the Executive Engineers of divisions whose name indicated in the letter stating therein that in the light of order dated 17.04.2023 passed in CWJC No. 11533 of 2018 and analogous cases a division wise seniority list has been prepared on the basis of date of entry in service. It has been further stated that the photocopy of seniority list is annexed with the letter. It has been further informed that few Divisional Offices have not provided information with regard to date of entry in

service, date of birth and reservation category of few daily wager employees of their respective divisions as such the same could not be mentioned in the seniority list. The respective divisions have been directed to confirm the mentioned facts and documents in the seniority list of respective divisions and if any information found to be incomplete or defective then in such circumstances an objection along with supporting evidences shall be provided to the department within two days and if there is no objection with regard to prepared seniority list, a certificate to that effect shall be submitted before the department within two weeks.

9. That in compliance of direction issued vide order dated 28.04.2023, the three men committee prepared a seniority list on the basis of date of entry in service.

10. That in the aforesaid exercise the case of petitioners (total 30) of CWJC No. 11533 of 2018, Sri Jitendra Kumar petitioner on CWJC No. 12020 of 2018, Md. Kamruddin petitioner of CWJC No. 12756 of 2018 and Sri Sudesh Jha petitioner of CWJC No. 9322 of 2018 have also been considered since their case have not been considered in the year 2006-07.

11. That it is humbly submitted that the case of the petitioner Bishundeo Mishra in CWJC No. 11184 of 2019 as indicated in the order dated 28.04.2023 relates to irrigation department as such his case does not come under consideration in the present batch of cases.

12. That the case of the petitioner Ramesh Prasad Yadav in CWJC No. 4812 of 2021 as indicated in the order dated 28.04.2023 has already been rejected by the department vide Departmental order contained in Memo No. 1987 dated 26.12.2019 on the ground that the petitioner was earlier posted as a typist and his case could not be considered against the 2277 newly created and sanctioned Group-D Technical Post.

13. That it is humbly submitted that the case of Petitioner Nilesh Kumar in CWJC No. 14619/2018 relates to Bihar Rajya Jal Parshad, Where no post of Group-D technical post was created.

14. That the Three Men Committee after considering the entire material available on record found that out of 156 petitioners, only 21 petitioners were entitled for regularization off their services in terms of inter se seniority prepared on the basis of date of entry in service. Out of 21 entitled petitioners, 3 petitioners namely Dinanath Jha in CWJC No. 20837/2018, Devanand Jha in CWJC No. 20837/2018 and Ramchandra Singh in CWJC No. 9237/2018 have attained the age of retirement. The three men committee after due consideration issued a detailed report on 09.05.2023.

15. That from perusal of the detailed chart annexed with the report dated 09.05.2023, it is evident that the petitioner Rajeev Kumar Singh of CWJC No. 5064/2017 (Rajeev Kumar Singh versus the State of Bihar and others), petitioner Dharmnath Singh, Rameshwar Singh, Ramashish Ram of CWJC No.

7691 of 2018 (Dharmnath Singh and others versus The State of Bihar and others), petitioner Ram Chandra Kumar @ Ram Chandra Singh of CWJC No. 7760 of 2018 (Ram Chandra Kumar @ Ram Chandra Singh versus The State of Bihar and others), petitioner Ram Udit Singh of CWJC No. 9804 of 2018 (Ramlaulin Rai and others versus The State of Bihar and others), petitioner Kanhaiya Prasad of CWJC No. 14337 of 2018 (Rajeshwar Prasad and another versus The State of Bihar and others), petitioners Abhay Kumar Verma, Gajendra Kumar Mishra, Pravin Kumar Mallik of CWJC No. 13726 of 2018 (Virendra Kumar Bhagat and others versus The State of Bihar and others), petitioners Dinanath Jha, Devanand Jha, Shashi Chandra Jha, Shashi Nath Jha of CWJC No. 20837 of 2018 (Dinanath Jha and others versus The State of Bihar and others), petitioner Rajwansh Lal of CWJC No. 13895 of 2018 (Rajwansh Lal Versus The State of Bihar and others), petitioner Ajay Kumar of CWJC No. 8964 of 2019 (Ajay Kumar versus The State of Bihar and others), petitioner Bhuneshwar Chaudhary of CWJC No. 9149 of 2019 (Bhuneshwar Choudhary versus The State of Bihar and others), petitioner Ramchandra Singh of CWJC No. 9237 of 2018 (Ramchandra Singh and others versus The State of Bihar and others), petitioners Ashwini Kumar Singh, Manish Kumar Chaudhary, Anil Kumar @ Anil Kumar Singh of CWJC No. 14960 of 2022 (Ashwini Kumar Singh and others versus The State of Bihar and others) may come under zone of consideration if the inter se seniority will be decided on the basis of date of entry in service.

16. That in the facts and circumstances stated above the order dated 17.04.2023 has been complied with and the present writ application is fit to be disposed of.”

7. Having heard learned counsel for the parties and after going through the third supplementary counter affidavit, this Court finds that the issues with regard to regularisation treating the date of entry into service as one of the parameters have been resolved to some extent. In terms of their statements made in the third supplementary counter affidavit, the respondents are hereby directed to take immediate steps towards regularisation of those petitioners who have been found entitled for the same.

8. Having noticed that the three petitioners, namely, Dina Nath Jha, Devanand Jha and Ram Chandra Singh were found entitled for absorption under the 2006 Policy but they were left out because the then Committee did not examine their cases keeping in view the judgment of this Court and the affidavit of the State filed by the learned Additional Advocate General in the said proceeding, this Court directs the respondents to consider the case of these three persons also for purpose of giving them benefit of regularisation. It is well-settled that a person cannot be allowed to suffer for the wrong committed by the authorities.

9. Let the entire exercise in the aforesaid matters be carried out and give effect to within a period of two months from the date of receipt/production of a copy of this order.

10. As regards the other petitioners about whom the respondents have not found

their case within the zone of consideration as per the Policy of 2006, the respondents are directed to pass a reasoned order giving all such grounds which are going against them in the matter of regularization but while doing so, the respondents must take note of it that they should not be discriminated and no such ground would be available to the respondents which have already been given a go-bye by the same respondents in case of other similarly situated. In case they will be aggrieved by such reasoned order, liberty will be available to such persons to seek their remedy in accordance with law.

11. The matters which relate to other Department shall be referred to those department within a period of one month from the date of communication of this Court. Since there is no denial of the fact that the posts are still available, the respondents are expected to do the complete exercise with all endeavours to confer the same benefits to the petitioners which have been allowed to others similarly situated. Several cases have been cited at the Bar and this Court has taken note of those instances in its orders which have already been quoted hereinabove in which this Court has noticed that how the department has conferred benefits to several persons in different situations.

12. Let the same yardscale be adopted in the case of all the petitioners.

14. All these writ applications stand disposed of with the aforesaid directions.