

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 3890 of 2009**

1.Ram Prabesh Singh
2.Santara Devi. Petitioners

Versus

1. Bihar State Road Transport Corporation, through
Chairman-cum-Managing Director, Paribhan Bhawan,
Birchand Patel, Patna-1.
2. Jharkhand Road Transport Corporation, through
Transport Secretary, Ranchi.
3. Divisional Superintendent, B.S.R.T.C., Ranchi.
..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Ms.M.M.Pal, Sr. Advocate
For the Resp. No.1 : Mr. Pankaj Kumar, Advocate
For the Resp. No.2 : Ms. Shivani Kapoor, A.C. to S.C.-II

10/Dated: 15th March, 2021

Heard learned counsel for the parties through V.C.

2. The instant writ application has been preferred by the petitioners for following reliefs:-

“a. The respondents be directed to give effect to the order dated 03.02.1989 so far this petitioners are concerned and to extend all the Benefits of regularization at par with the same and similarly situated persons for which he is legally entitled to.

b. The respondents be directed to pay the petitioners regular salary and all service benefits inpersuance to the order of regularization dated 03.02.1989.

c. The respondents be directed not to discriminate the petitioners and to extend all the service benefits for regularization to these petitioners without any further delay.

d. The respondents be directed to pay the arrears of salary for the period from 14.05.1986 to 10.03.2008 i.e. from the date of put off to the date of joining for which he was put off in connection with the criminal case but subsequently were acquitted from the Criminal charge.

e. The respondents be directed to treat the petitioners as regularized on and from 03.02.1989 i.e. the date when their

juniors were regularized and give all consequential benefits thereon.

f. Any other relief or reliefs for which these petitioners are entitled to.

3. Ms. M.M.Pal, learned senior counsel for the petitioner submits that while the petitioners were posted as Conductors, a criminal case was lodged against them on 20.02.1986 under Sections 452, 448, 384, 506 and 511 I.P.C. for which both the petitioners were sent up for trial and they were put off from duty vide order dated 14.04.1986 issued by the Chairman- cum- Managing Director of the respondent-Board. Lastly vide judgment dated 27.05.1988 both the petitioners were acquitted.

4. The grievance of the petitioners is that after their acquittal; both made representations in the year, 1988 and requested the authorities to allow them to join their duties. However, they were restrained from joining their duties in spite of the fact that a list of casual workers were prepared by the BSRTC and altogether 377 workers were considered for regularization in which the name of these petitioners were at serial no. 342 and 343.

5. Ms. Pal further draws attention of this Court towards Annexure-4 and submits that after more than 25 years the joining of the petitioners has been accepted and they have been posted at Daltonganj Depot. In the said letter dated

10.03.2008 (Annexure-4) issued by the Headquarter, the joining of the petitioners were accepted on conditions:-

(a) In absence of regular conductor, on the basis of requirement, they will provide work and on that basis they will be paid wages.

(b) They will be paid wages in the previous rate and all the orders issued before the date of put off are deemed to be cancelled.

The petitioners thereafter performed their duties, however they were not regularized.

6. Ms. Pal concluded her argument and submits that even though the petitioners were appointed and were considered for regularization pursuant to Memo No. 299 dated 03.02.1989 and their names were at serial nos. 342 and 343, the respondents never took work from them and it is only on 10.03.2008 their joining were accepted. Though the petitioner represented several times, but their claim for back wages from the date of regularization i.e. 03.02.1989 till the date of joining i.e. 10.03.2008 were never paid to them

7. Mr. Pankaj Kumar, learned counsel for the respondent no.1 (BSRTC) submits that the issue of regularization has already been settled by the Hon'ble Apex Court and referred to the judgment passed in C.W.J.C No. 12926 of 2009 and submits that the petitioner should have

filed application before the Labour Commissioner as they were having an alternative remedy. Replying to this contention of learned counsel for BSRTC, Ms. Pal contended that this judgment cannot be applied with the case of the petitioner as this order has been passed in the case of a Union and not for any individual.

8. Ms. Shivani Kapoor learned counsel for the respondent-JSRTC submits that the petitioner no.1 had earlier moved before this Court in C.W.J.C. No. 1722 of 1996 (R) which was dismissed without any interference. As such no relief can be granted to the petitioner no.1. However, she fairly submits that if the petitioner no.2 will represent to the respondent-Board showing equality with other people amongst the list of 377 casual workers his case can be considered after due verification.

9. Having heard learned counsel for the parties and after going through the documents annexed and averments made in the respective affidavits, it appears that the petitioner no.1 had earlier moved before this Court in CWJC No. 1722 of 1996 (R) which was preferred for a direction upon the respondent to accept the joining and pay back wages and not to give effect to the order dated 14.04.1986, which is same and similar fact which has been prayed in the instant application.

10. After going through the aforesaid order, it appears that Annexure-3 of this case i.e. order dated 03.02.1989 (list of casual worker for regularization) was Annexure-5 in that case and this Court after verifying the original records came to conclusion that though the name of the petitioner was mentioned at serial no. 342; however against his name a endorsement was made that matter was pending before the head office. For proper appreciation and to decide the issue involved in this case relevant portion of the order of this court passed in the case of Petitioner no.1 in C.W.J.C. No. 1722 of 1996 (R) is quoted herein below:-

“Having considered the submissions made by learned counsel for the parties an after going through the material available on record and also original record produced by learned counsel for the respondents it is manifest that the petitioner was engaged on daily wages in the year 1980. He was restrained from discharging his duty with effect from 14.04.1986, Annexure-1. He was made accused in criminal case for assaulting and mis-behaving with the senior officer. In the criminal case the petitioner has been acquitted but he was not permitted to join again. It appears from Annexure-3 to rejoinder to the counter-affidavit that the service of the petitioner was regularized but it appears from the original record produced by learned counsel for the respondents that relevant portion of the Annexure-5 was not annexed with the rejoinder to the counter-affidavit. It appears from the original of Annexure-5 that name of the petitioner is mentioned at serial no. 342 and against his name endorsement has been made that matter is pending before the Head Office. It further appears that complete one page has not been annexed with Annexure-5. From perusal of the said page of original of

*Annexure-5 it appears that the officer concerned was directed that before issue of order he must verify the break in service, reappointment, suspension, stopping from duty, absence for long time, departmental proceeding, etc. and furnish certificate to the aforesaid effect. If the officer concerned furnishes the certificate without verifying the aforesaid fact he shall be responsible for the said laches. It was also mentioned that due to aforesaid reason if it is found that there is break in employment and any other relevant material service of such conductor or employee shall not be regularized. Learned counsel for the respondents pointed out on consideration of the aforesaid facts the office order with regard to regularization of service of the petitioner has not been issued and hence claim of the petitioner cannot be allowed in such circumstances. It is true that the Supreme Court had directed to frame a scheme for regularization of the daily wage employee if they were working for sufficient long time but in the facts and circumstances of the case, as discussed above in my view the petitioner is guilty of suppressing the relevant facts as the relevant portion of Annexure-5 as it appears from the original record, was not attached with the rejoinder to the counter-affidavit. **Besides the case of the petitioner was also considered and the respondents have come to a conclusion, in the facts and circumstances of the case and in view of specific direction for regularization which is manifest from the original of Annexure-5, that the petitioner is not entitled for regularization of service as indicated above.***

Thus on consideration of the entire facts and circumstances of the case, **I do not find merit in this application. It is, accordingly, dismissed.**”

Emphasis Supplied

11. After going through the aforesaid order, it appears that the claim of the petitioner no.1 was rejected and this Court has categorically held after verifying the original records of case including the order dated 03.02.1989 (*list of casual worker for regularization*) that the petitioner is not entitled for regularization of service and dismissed the writ application. It has been informed that the said order has attained finality. As such, no relief can be granted to the petitioner no.1.

12. So far as petitioner no.2 is concerned; in view of the aforesaid facts and looking to the issue of laches on part of petitioner no.2 for not raising the grievance for so many years and also the opinion of this Court in earlier writ application with regards to the order dated 03.02.1989 (*list of casual workers for regularization*); I am of the opinion that interest of justice would be sufficed by giving liberty to the petitioner no.2 to represent before the respondent No.2 along with all supporting documents in his favor for redressal of his grievance, as in the list of 377 (*list of casual workers for regularization*) admittedly; the name of the petitioner no.2 was at serial no. 343, however, since no formal order is on record so as to suggest the reasons for his non-regularization. As such if any such representation is filed by the petitioner no.2 within a period of ten weeks; then the same shall be disposed of in accordance with law

and the applicable rules/notification of the respondents within a period of six months from the date of receipt of such representation.

13. With the aforesaid observations, the instant writ application stands disposed of.

(Deepak Roshan, J.)

Amardeep/