

**Arbind Kumar Vs. State of Bihar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/522224](http://sooperkanoon.com/522224)

**Court :** Jharkhand

**Decided On :** Oct-31-2002

**Reported in :** 2002(50)BLJR2403

**Judge :** M.Y. Eqbal, J.

**Acts :** Service Law; [Constitution of India](#) - Article 226

**Appeal No. :** CWJC No. 991 of 1995

**Appellant :** Arbind Kumar

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** R.S. Mazumdar,; G.A. and; A. Banerjee, Advs.

**Advocate for Pet/Ap. :** V. Shivnath,; M.B. Lal,; M. Chandra,;

**Disposition :** Writ allowed

**Judgement :**

**M.Y. Eqbal, J.**

1. Petitioner has prayed for quashing the order as contained in Memo No. 1442, dated 23.7,1994 which has been passed in compliance of the order dated 16.3.1994 passed in CWJC No. 123 of 1994 (R) and further for a direction to regularize the service of the petitioner in Class III post.

2. There is no need to discuss the facts of the case as it will reflect from the order dated 16.3.1994 passed by Division Bench of this Court in the earlier writ petition filed by the petitioner being CWJC No. 123/94R. The order reads as under :--

'Heard learned counsel for the petitioner and learned counsel for the respondents.

The petitioner was appointed on 13.11.1987 on the Post of Junior Assistant for a period of six months on compassionate ground. His services have been extended for time to time as would be evidence from the order contained in Annexure-3 Series. However, by reason of the impugned order dated 21.12.1992 (Annexure-5), the services of the petitioner has been regularized in Class IV post. As the petitioner had initially been appointed in Class III post on compassionate ground, we do not find any reason whatsoever as to why the petitioner at this stage should have been appointed in Class IV post. However, at the time of initial appointment of the petitioner, he was found fit for appointment in Class III post. In our opinion, there cannot be any earthly reason as to why after putting him in work for more than five years, he had been found fit for regular appointment in Class IV post.

In this view of the matter, we dispose of the writ application by directing respondent No. 4 to consider the matter afresh and pass appropriate order in accordance with law within two months from the date of receipt/production of a copy of this order.'

3. In compliance of the aforesaid order the concerned respondent passed the impugned order justifying the regularization of the petitioner in Class IV post.

4. I have heard Mr. V. Shivnath, learned counsel for the petitioner and Mr.R.S. Mazumdar, learned Government Advocate.

5. Admittedly after the death of the father of the petitioner he was appointed in 1987 on the post of Assistant by order of the Chief Engineer. Petitioner's service was time to time extended from 1987 to 19.92 and he was finally allowed to work against the sanctioned post of Junior Assistant (Class III, post) in anticipation of approval of competent authority. It is also not disputed that this petitioner was possessing requisite qualification for appointment on the post of Assistant and he

has been continuously and successfully worked on the post of Assistant from 1987 to 1992. However, all of a sudden by office order dated 13.1.1993 the Chief Engineer posted the petitioner in Class IV post which is under challenge.

6. The stand of the respondents in the counter affidavit is that the appointment of the petitioner was made provisionally in 1987 and the matter was referred to the competent authority for approval. According to the respondents the competent authority after considering the letter and circular of the year 1992 and 1994 issued from the Water Resource Department came to the conclusion that the Chief Engineer has, got no power to make appointment on compassionate ground. Accordingly direction was issued to regularize the petitioner in Class III post. In my opinion, the stand of the respondents is wholly unjustified and without any basis. As noticed above, petitioner was possessing requisite qualification for appointment in Class III post after the death of his father who died in harness working as Junior Engineer. Petitioner continuously worked from 1987 to 1992 in Class III post and there was no reason at all to regularize him in Class IV post. Such action of the respondents is arbitrary and unjustified.

7. For the reason aforesaid, this writ application is allowed and the impugned order is set aside and it is directed that petitioner shall be regularized on the post of Assistant (Class III post). However, in the peculiar facts of the case, petitioner shall not be entitled to any difference of wages for the period he was allowed to work in Class. IV post.