

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15666 of 2006

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1. (i) SHOBHA DEVI w/o Tarkeshwar Upadhayay (ii) Rama Shankar Upadhayay and (iii) Premshankar Upadhayay both sons of Tarkeshwar Upadhayay, resident of village Pachrukhi Kata, via Naya Mohammadpur, PS. Koilwar, District Bhojpur.
2. Suresh Prasad, son of Shri Doman Sao, Resident of Village & P.S. Koilwar, District Bhojpur.
3. Ram Sundar Rai, son of Shri Sheopujan Rai, Resident of Village Simariya, P.s Koilwar, District Bhojpur.
4. Satyadeo Upadhya, son of late Basu Upadhya, Resident of village Daulatpur, P.s. Koilwar, District Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The District Nazarat Deputy Collector, Patna.
4. The District Welfare Officer, Patna.
5. The District Selection Committee, Patna.
6. The Divisional Selection Committee, Danapur, Patna.
7. The Sub-Divisional Officer, Danapur, Patna.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 16-07-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

"(i) For issuance of writ of mandamus commanding the respondents to advertise vacancy for adjustment appointment on class IV post and send names of petitioner (daily wagers between 1983 to 1990) for preparation of panel list in the light of circular issued by the personal and administrative reforms department govt. of Bihar vide memo no. 1533 dated 03.06.2006 (contained

in Annexure-4).

(ii) For issuance of direction/order to the respondent authorities to include names of these petitioners authorities to include names of these petitioners in final panel list which is going to be prepared by the recommendation of concerned department where the petitioners has worked on daily wages and fulfilling the criteria for inclusion of their names and entitled for appointment on regular vacant class IV posts.

(iii) For direction to the respondents authorities to include names of these petitioners and appoint them on any suitable class IV post as it :One Time Opportunity" as contained in the resolution issued by the Personal & Administrative Reforms Department, Govt. of Bihar vide memo no. 639 dated 16.03.2006 (Annexure-3)."

Having regard to the fact that the law in respect of regularization of daily wage employee during the pendency of this writ application stands settled by Full Bench judgment of this Court in the case of **Ram Sevak Yadav Vs The State of Bihar**, reported in **2013(1) PLJR 964**, wherein, dealing exactly the same

proposition of regularization of daily wages employee it has been held as follows:-

"We therefore sum up our conclusions and answer the reference as follows:-

(A) Secretary State of Karnataka vs Uma Devi, reported in 2006(2)PLJR (SC) 363, prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B)An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C)Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any Court orders.

The petitioners were appointed in temporary capacity by a process contrary to Article-14 of the Constitution without competitive selection as an individual favour doled out to them. There is no material to hold that they were appointed against vacant sanctioned post and possessed qualifications for the same. They were terminated before (Uma Devi) (supra) and have sought to retain their status by virtue of Court proceedings and are therefore not entitled to the benefits of paragraph 53. The issue of any procedural irregularity for a finding of forged appointment is therefore irrelevant."

this Court will not be now in a position to issue

any direction for regularization of the services of the petitioners.

That would leave the petitioners with a prayer of advertising those posts for making regular appointment in accordance with law. In this regard this Court is of the view that if the vacancies as claimed by the petitioners are still there, which are required to be filled up, the respondents may take steps for advertising those posts, by way of direct recruitment, in which the case of the petitioners should also be considered along with all other eligible candidates strictly in accordance with law.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

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