

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3787 of 2015

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1. Ranjeet Kumar Singh, son of Late Alakhdeo Singh, resident of village- Sabalpur,
P.S.- Rajgir, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary, Old Secretariat, Patna.
2. The State Transport Commissioner, Government of Bihar, Patna.
3. The Commissioner, Magadh Range, Gaya.
4. The District Magistrate , Jehanabad.
5. The District Transport Officer, Jehanabad.
6. The Deputy Collector (Establishment), Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar Singh

For the Respondent/s : Mr. GA4- ASHOK PRIYADARSHI

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-06-2015

15. 23.06.2015

Heard learned counsel for the parties.

Annexure-1 is the order under challenge in the present writ application. By virtue of this order, claim of the petitioner for regularization has been rejected on the ground that the petitioner has not completed 240 days in an year prior to 11.12.1990.

There cannot be any dispute on that aspect at all because the petitioner was engaged w.e.f. 01.01.1991 as a daily-wager and he continued to work in that capacity till 31.12.2009 till they disengaged him. This happened after the petitioner moved the High Court for regularization and Annexure-1 is a fall out of the

same.

One contention of the counsel for the petitioner, however, does merit consideration that district administration has accepted the position that they had engaged him on 01.01.1991 after the formation and creation of the new district of Jehanabad. His case obviously does not come under the previous circular of the government which has kept the cut off date as 11.12.1990, therefore, his set of facts is required to be dealt with differently and may be the guidelines issued in the case of M. L. Kesari will apply in the facts related to the present petitioner.

The facts not being in dispute and the rejection of the claim of the petitioner in the given facts, therefore, seems to be erroneous. He could not be equated with such daily wagers, who are engaged prior to cut off date of 11.12.1990. A right of regularization, therefore, may be required to be considered in light of what Hon'ble Supreme Court has to say in the case of ***State of Karnataka versus M. L. Kesari, reported in the case of 2010 (9) SCC 247.*** The Court is tempted to reproduce paragraph 10 and 11 of the said decision:

“10. At the end of six months from the date of decision in Umadevi (3)1, cases of several

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daily-wage / ad hoc / casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3)1 will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3)1 has expired. The one-time exercise should consider all daily wage / ad hoc / casual employees who had put in 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3)1 but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3)1 the employer concerned should consider their cases also, as a continuation of the one-time exercise.

The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3)1 are so considered.

11. The object behind the said direction in para 53 of Umadevi (3)1 is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of an interim orders of courts or tribunals, before the date of decision in Umadevi (3)1 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments / instrumentalities do not perpetuate the practice of employing persons on daily-wage / ad hoc / casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.04.2006 [the date of decision in Umadevi (3)1] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification are entitled to be considered for regularization. The fact that the employer has not undertaken such



exercise of regularization within six months of the decision in Umadevi (3)1 or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3)1 as a one-time measure.”

Writ application stands disposed off with a direction upon the respondents to consider the matter in light of what has been said by the Hon'ble Apex Court in paragraph 10 and 11 of M. L. Kesari’s case.

(Ajay Kumar Tripathi, J.)

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