

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12464 of 2015

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Sumitra Devi, wife of Devi Lal Mistri, resident of village Sohenpur, Block Manpur, P.S. Muffasil, District Gaya

.... Petitioner

Versus

1. The State of Bihar through District Magistrate, Gaya
2. The District Magistrate, Gaya cum Chairman, Lodging House Committee, Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ray Saurabh Nath

For the Respondent/s : Mr. Jai Shankar Barnwal- Ga5

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 18-08-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“That this is an application being filed for quashing the office order issued by the District Magistrate, Gaya cum Chairman, Lodging House Committee vide memo No. 52 dated 7.4.2015 whereby the service of the petitioner has been terminated arbitrarily without following the provisions of rules of Natural Justice and issue a mandamus allowing the petitioner to continue with her service under the State of Bihar.”

2. Having regard to the nature of employment of the petitioner which was out and out on daily wages, this Court will have no difficulty in holding that the petitioner had no right to the post. The impugned order of termination of the service of the petitioner is also not in isolation, rather the authority has come out with a decision to do away with the entire establishment of daily

wages.

3. Learned counsel for the petitioner, however, had tried to rely on some accounting and documents to show that they were in fact available to the Samwad Sadan Samiti, Gaya and therefore, the recent action in the impugned order is bad. The question however again would be as to what right the petitioner seeks to enforce by virtue of being a daily wage employee. Daily wages have no right to the post.

4. This principle of law in fact has already been settled by the Apex Court in the case of the Manager, Government Branch Press & anr. vs. D.B. Belliappa, reported in AIR 1979 SC 429, wherein only limited line of enquiry for the courts in the matter of removal of daily wages employee can be adherence to the principle of 'last come first go'. Admittedly when the entire establishment of daily wages have been done away and none of the daily wage employees have been retained so as to now make possibility of an enquiry on the principle of 'last come first go'.

5. Learned counsel for the petitioner then had relied on an order of this Court passed in a writ application of one Sheo Ranjan Prasad in C.W.J.C.No. 2490/1998 disposed of on 16.9.1999 to contend that once a direction was given by this Court for considering the case of his regularization, the authority should

have regularized the service of the petitioner.

6. In the considered opinion of this Court, all these judgments in respect of daily wagers in view of the judgment of the Full Bench of this Court in the case of Ram Sevak Yadav & anor. Vs. State of Bihar & ors., reported in 2013(1) PLJR 964, have now no presidential value. The Full Bench in the case of Ram Sevak Yadav (supra) has gone to hold that the daily wager has no claim for regularization of service in the following words:

“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."

7. Admittedly the petitioner at that point of time in 1999 was not regularized and had continued in daily wages and therefore, now when the daily wages establishment has been itself abolished by the impugned order and the services of all daily wages employees including the petitioner has been have been terminated, this Court will not find any reason to revert back to the directions given in case of Sheo Ranjan Prasad (supra).

8. Finally, the reliance placed by the learned counsel for the petitioner on a judgment of the Apex Court in the case of Amarkant Rai v. State of Bihar & ors., reported in 2015(2) Supreme 699, will have nothing to do with the facts of the present case, inasmuch as whatever was observed in paragraph no.14 thereof was in relation to certain observations made in paragraph no.53 of Uma Devi's case. Let it be noted that the Full Bench in the case of Ram Sevak Yadav (supra) has also considered the ratio laid down by this Court in the case of Secretary, State of Karnataka vs. Uma Devi & ors., reported in (2006)4 SCC 1, and therefore, so far the case of regularization is concerned, that

cannot be now gone into once employment of the petitioner on daily wages has itself come to an end.

9. Thus, for the reasons indicated above, this application must fail and is hereby dismissed.

(Mihir Kumar Jha, J)

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