

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2247 of 2014

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1. Umesh Yadav @ Umesh Prasad Yadav, Son Of Late Dhaneshwar Yadav
resident of village - Chakla (North Side), P.O. Sukhashan Chakla, P.S.
And District - Madhepura

2. Surendra Prasad Yadav Son of Late Sital Prasad Yadav, Resident of
Village + P.O. Permanandpur Via - Vadma, P.S. Murliganj, District -
Madhepura

.... Petitioner/s

Versus

1. The State of Bihar

2. The Secretary, Personal and Administrative, Reforms Department,
Government of Bihar, Patna

3. The Joint Development Commissioner, Rural Development Department,
Bihar, Patna

4. Deputy Development Commissioner, Rural Development Department,
Government of Bihar, Patna

5. District Magistrate, Madhepura, District - Madhepura

6. Special Secretary, Rural Development Department, Government of Bihar,
Patna

7. Director Account Administration and Self Plans District Rural
Development Agency, Madhepura, District - Madhepura

8. Deputy Development Commissioner, Madhepura, District - Madhepura

9. Managing Committee, D.R.D.A. District - Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surya Narayan Yadav, Advocate.
Mr. K.Vishoka Nand, Advocate.

For the Respondent/s : Mr. Chhotelal Mishra, AC to GA-13.

For the D.R.D.A. : Mrs. Sunita Kumari, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

6 04-02-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:

"1. ... to quash the letter dated 24.06.2013 vide Memo No. 1020 issued by Seal and signature of the respondent no. 8 the Deputy Development Commissioner, Madhepura and further prayer is to give a direction to the concerned respondent to consider the case of the petitioner for appointment in view of the circular dated 10.05.2005 issued by concerned respondent by which stated that person who working on before 11.12.1990 their cases should be considered for regularisation/absorption pursuant to order passed by Hon'ble Justice V.N.Sinha vide order dated 22.7.2011."



2. Assailing the impugned order passed by the Deputy Development Commissioner, Madhepura dated 24.06.2013, learned counsel for the petitioner has basically concentrated on two aspects while seeking relief for regularisation of the services of the sole petitioner. Firstly, according to him, the respondent Deputy Development Commissioner, in capacity of Chairman of the District Rural Development Authority, has failed to take into account that others including Chandradeep Mahto were regularized in service and there were still two vacancies for the post of Driver on which the petitioners could have been regularized. Secondly, he has submitted that there is a decision of the State Government which lays down that those persons, who were engaged on daily wages till the year 1990, were to be regularized in service.

3. Learned counsel for the respondents, on the other hand, has submitted by taking a plea that neither the Circular of the State Government can be made applicable nor the petitioners can claim regularisation of service as a matter of right specially when the scheme itself being carried out by the D.R.D.A. is temporary and there is no concept of any permanent post under such scheme.

4. In the considered opinion of this Court, the moment the petitioners come out with a case that their engagement was



made on a daily wage basis in the year 1987, the finding of the authority has also been taken into account, who in the impugned order has held that such daily wage appointments did not continue beyond 1989. Learned counsel for the petitioners, however, has sought to controvert by placing reliance on an order of the Deputy Development Commissioner-cum-Chief Executive Officer of the D.R.D.A. dated 11.09.2004 that the services of both the petitioners were terminated not only in the year 1989 but also on 11.09.2004.

5. The petitioners, in order to prove that they had continued to be uninterruptedly from 1987 to 2004, ought to have brought any document which could have shown that they continued uninterruptedly for the period of 17 years, but there is no such document on record and, therefore, the periodical interruption on daily wage engagement can never give a right of regularisation to the petitioners.

6. The issue as to whether a person, who engaged as daily wage employee, without publishing an advertisement and without following the selection process and thus such engagement, being in teeth of Article 14 of the Constitution of India, was gone into by the Full Bench of this Court in the case of **Ram Sevak Yadav Vs The State of Bihar** reported in **2013(1) PLJR 964**, wherein the law, with regard to regularisation of such daily wages employees, was laid down in the following terms:-

"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. The law settled by the Full Bench of this Court, being very clear, this Court does not find any error in the impugned order rejecting the claim of regularisation of services of the petitioners.

8. The acknowledgment of the D.R.D.A. being run by a registered society and that too on the periodical financial assistance, being received from the Central Government and the State Government, in fact, cannot have a permanent staffing because of want of permanent post. Therefore, whatever decision has been taken in case of Chandradeep Mahto has to be again

understood in the context of the continuation of the scheme. This Court fails to understand that if the scheme itself is of temporary nature, how can a permanent staff be appointed.

9. The only thing, which can be observed in favour of the petitioner no. 2, Surendra Prasad Yadav, is that since he has worked on daily wage and the principles laid down by the Apex Court in the case of the ***Manager, Government Branch Press & Anr. v. D.B.Belliappa*** reported in (1979) 1 SCC 477 is also clear that in the event, a daily wage employee is removed from service on account of want of work, the employer will be under obligation to first consider the case of even daily wage employment. There is at least one document to show that there were vacancies on the post of Jeep Driver. Thus, if the respondents would need to utilize the services of any Jeep Driver, the case of the petitioner no. 2 shall also be considered by way of only daily wage engagement which will never confer any right to the petitioner no. 2 to be regularized in service.

10. So far the petitioner no. 1 is concerned, he was sought to be engaged to work as a Peon and since, there is no vacancy of the post of Peon, as per the proceedings showing vacancy of the post of Jeep Driver, this Court would not give any such direction for even engagement of the petitioner no. 1 on daily wage basis.

11. As a matter of fact, the earlier direction also of this Court was only to give weightage in the event of making direct appointment by way of giving relaxation in age. Thus, if at any point of time, the D.R.D.A. would advertise these posts for regular appointment, both the petitioners will also be entitled for consideration of their case along with other eligible candidates by seeking exemption of age limit at least for the period they had worked as daily wage employees in the D.R.D.A.

12. Since, the respondent authorities have not only taken this stand in the impugned order that no appointment is going to be made due to ban imposed by the Central Government but also a similar stand has been taken in paragraph 10 of the counter affidavit, this Court must make it clear that whatever observations have been made with regard to giving relaxation of age is only to be extended as and when the regular appointment is made by the D.R.D.A.

13. With the aforementioned observations and directions, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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