

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2298 of 1999

=====

Khelanand Thakur, Son of Sri Baleshwar Thakur, resident of village &
PO Kaithenea, P.S. Lakhnaor, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Secretary, Water Resources Department, Government of Bihar,
Patna
 3. The Engineer-in-Chief, Water Resources Department (Irrigation),
Government of Bihar, Patna
 4. The Chief Engineer, Water Resources Department (Irrigation)
Department, Government of Bihar, Darbhanga
 5. The Superintending Engineer, Western Koshi Canal Division,
Jhanjharpur, District Madhubani
 6. The Executive Engineer, Western Koshi Canal Division,
Jhanjharpur, District Madhubani
 7. The Assistant Engineer, Western Kosi Canal Sub-Division-1,
Jhanjharpur, District Madhubani
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Kameshwar Pd. Gupta

For the Respondent/s : Mr. Jainendra Kumar Sinha, AC to GA-6

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

Date: 06-07-2015

1. The petitioner has sought for the following relief
in the present writ application:-

*“That this is an application for issuance of an
appropriate writ and/or direction for quashing the order
contained in letter no. 170, dated 27.1.1999 (Annexure-1)
passed by the Superintending Engineer (Respondent no.5)
as well as for quashing the order contained in letter No. 2705
dated 2.8.97 (Annexure-2) passed by the Chief Engineer (Respondent No.4) and also for quashing the order contained*



in letter no. 164 dated 12.3.1997 (Annexure-3) issued by the Executive Engineer (Respondent No.6) and the order contained in letter No. 329, dated 13.3.1997 (Annexure-4) issued by the Superintending Engineer (Respondent No.5) whereby the representation, dated 17.11.1998 filed by the petitioner in pursuance of the order and direction dated 30.10.1998 passed by this Hon'ble Court in CWJC No. 10034 of 1997 has been dismissed by the Superintending Engineer (Respondent No.5) confirming its earlier order contained in letter No. 2705, dated 2.8.1997 (Annexure-2) refusing payment of salary to the petitioner and/or for issuance of a further direction to the respondents to reinstate the petitioner upon his original post over which he worked and was paid his salary from 1.3.1985 till 15.6.1996 with a further direction the respondents for payment of salary to the petitioner from 16.6.1996 till date as per the order and direction dated 26.11.1997 passed in CWJC No. 10034 of 1997 (Annexure-5) by this Hon'ble Court and further to pay current salary of petitioner and/or pass such other order or orders as may be deemed fit and proper.”

2. From the pleadings in the writ application, it appears that the petitioner had earlier approached this Court seeking quashing of the letter dated 02.08.1997 (Annexure-2) which is under challenge in the present writ application also, by



filing CWJC No. 10034 of 1997. This Court had disposed of the said writ application by an order dated 30.10.1998, in view of the stand taken on behalf of the petitioner that he would be filing a representation for regularization of his service and also for payment of salary for the period from 02.03.1997 when he was removed till the date he was taken back. This Court disposed of the writ application in view of such stand of the petitioner that he would file the representation in the light of an order dated 06.07.1998 passed in CWJC No. 5842 of 1987 on a writ petition filed by Sinchai Kamgar Union and another vs. State of Bihar and others, wherein this Court had passed the following order:-

“In that view of the matter, this Court disposes of this writ petition by directing the petitioner Union, to make a detailed representation giving details of the persons who are still working. Such representation be sent to respondent nos. 2,3 and 4 within a period of one month from today and upon receipt of such representation, respondent nos. 2,3 and 4 will frame suitable schemes for regularization of the services of those petitioners who have completed at least 10 years of continuous service. Such scheme may be framed within a period of six months from the date of receipt of the said representation. It is,



however, made clear that those employees whose services have been terminated are also entitled to make their representations separately to the aforesaid respondents during the aforesaid period but for them also the scheme may be framed within the aforesaid time frame. It is, however, made clear that till such scheme is framed and finalized, the services of the employees who are still working should not be disturbed. With the above direction, this writ petition is disposed of. No. cost.

3. The petitioner filed his representation dated 17.11.1998 pursuant to the order of this Court dated 30.10.1998, which came to be rejected by the impugned order dated 27.01.1999, which is under challenge in present writ application. It is the case of the petitioner that the respondents should not have refused to regularize his service on the ground that he was engaged as a daily wage employee on a date subsequent to 01.08.1985. It is his case that he was appointed on daily wage basis on 01.03.1985 as Chowkidar under Koshi Canal Sub Division No.I and since then he worked there up to 01.05.1985 and thereafter, from 01.06.1985 to 01.08.1985 in the said Sub Division. It is his



further case, as would appear from his representation dated 17.11.1998 (Annexure-7) that the petitioner was again engaged on 05.08.1985 and continued up to 1990 for which he was paid his emoluments/wages. It is, therefore, his case that he should be treated to have been appointed on daily wage basis as on 01.08.1985 as he was working as Chowkidar since 01.03.1985 itself. It is his further case that he worked under the Koshi Canal Sub Division No.I, Jhanjharpur under the orders of the Executive Engineer, Koshi Canal Division, Jhanjharpur from 1991 to 15.6.1996. It is his specific case that in 1994, a list of daily wage employees was prepared in which the petitioner was shown to have been working since 01.03.1985.

4. It is in this background of the facts, it is his plea that his services should have been regularized treating his appointment prior to 01.08.1985.

5. The facts as noted above have been stated by the petitioner in his representation dated 17.11.1998 (Annexure-7), before the Executive Engineer, West Koshi Canal Circle, Jhanjharpur.

6. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner's case for



regularization in service has been rejected only on the ground of his engagement on daily wage basis subsequent to 01.08.1985, the cut off date fixed by the State Government for considering cases of regularization of daily wage employees. He has submitted that firstly; there is no rationale behind the fixation of the said cut off date i.e. on 01.08.1985 for considering the cases of regularization of the employees. He has relied upon an order of this Court dated 07.05.1997 passed in CWJC No. 1489 of 1996 (Radhey Shyam Jha and others vs. State of Bihar and others), wherein this Court observed that while considering the question of regularization, cases of all such persons are to be considered, irrespective of the cut off date.

7. It is his second submission that in any event, the petitioner's first engagement as daily wage was on 01.03.1985, and, therefore, the cut off date of 01.08.1985 could not come in way of considering the petitioner's case of regularization of his service. He has further submitted that in any case, the cut off date of 01.08.1985 came to be subsequently extended to 11.12.1990 from 01.08.1985, by a resolution No. 489 dated 10.5.2005. He has relied upon another resolution dated 16.3.2006 issued by the personnel



and Administrative Reforms Department, Government of Bihar which contains a decision for regularization of services of daily wage employees who had continuously worked for a period of five years (at least 240 days each year). He has submitted that in the light of the said resolution of the State Government, the petitioner's case for his regularization ought to have been considered.

8. As has been noted above, in the light of the order of this Court dated 30.10.1998 passed in CWJC No. 10034 of 1997, the petitioner had filed representation, seeking regularization of his service and payment of wages. The Superintending Engineer, West Koshi Canal Circle, Jhanjharpur rejected the petitioner's claim for payment of wages for the period after 15.10.1996 on the ground that no work was taken from him after the said date by the Department. From the representation filed by the petitioner (Annexure-7), it is evident that the petitioner did not claim that he had worked after 15.6.1996. He admitted in his representation that he had received the wages for the period 1991 to 15.6.1996. The Superintending Engineer in his letter dated 27.01.1999 (Annexure-1) which is impugned in the present writ application, came to a conclusion that the



petitioner was not entitled for any wages. As regards the petitioner's claim for regularization of his service, the Superintending Engineer observed that his claim that he was working regularly from before 01.08.1985 was found to be incorrect and as per the report of the Inquiry Committee constituted by the Chief Engineer, Water Resource Department, it was found that the petitioner's engagement was wrong on 05.10.1985 i.e. subsequent to cut off date of 01.08.1985.

9. If the facts stated by the petitioner in his representation dated 17.11.1998 are treated to be correct, on his own showing, the petitioner was engaged on daily wage basis as Chowkidar on 01.03.1985, whereafter he continued up to 01.05.1985. He was again engaged on 01.06.1985 and continued thereafter, up to 01.08.1985. He is said to have been again engaged on 05.08.1985 and continued up to 1990. Subsequently, under the orders of the Executive Engineer, Koshi Canal Division, Jhanjharpur, he worked for the year 1991 to 15.6.1996. He has not given the date from which he was engaged in the year 1991, as a daily wage employee.

10. This is an admitted fact that no procedurd in

conformity with the provisions of Articles 14 and 16 of the Constitution of India was followed at any point of time, while engaging the petitioner on daily wage basis.

11. From the pleadings in the writ application, documents brought on record by the petitioner and the relief sought for by him, it would appear that the petitioner seeks issuance of a writ in the nature of mandamus by this Court in exercise of power under Article 226 of the Constitution of India to give permanent status to the petitioner's employment which was initially on daily wage basis because such engagement continued for considerable period though his initial engagement on daily wage basis was without following requirements under Articles 14 and 16 of the Constitution of India. The manner in which the petitioner was engaged on daily wage basis, therefore, cannot be said to be irregular which can be regularized, rather it was illegal, having been made in violation of Articles 14 and 16 of the Constitution of India.

12. The law relating to regularization of services of the employees appointed in an irregular/illegal manner and giving permanent status to such employees has seen a sea change, with the law laid down by the Supreme Court in case



of ***Secretary, State of Karnataka Vs. Uma Devi (3) reported in (2006) 4 SCC 1***. The Supreme Court while considering the scope of issuance of a writ of mandamus, followed a Constitution Bench decision in case of ***Rai Shivendra Bahadur (Dr.) Vs. Governing Body of the Nalanda College reported in AIR 1962 SC 1210*** and held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposed a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it.

13. There is legally recognized distinction between regularization and conferment of permanent status to an employee in service jurisprudence as noted by Supreme Court in case of ***State of Mysore Vs. S. V. Narayappa reported in AIR 1967 SC 1071***, wherein the Court held that it was misconception to consider that regularization meant permanence. This view came to be reiterated in case of ***R.N. Nanjundappa Vs. T.Thimmiah reported in (1972) 1 SCC 409***, wherein the Supreme Court held in paragraph 26 as follows:-

“26. Counsel on behalf of the respondent contended that regularization would mean conferring the



quality of permanence on the appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

14. The Supreme Court in clear terms held that a regularization was possible of an act which is within the power and province of the authority, where there has been some non-compliance of the procedure or manner which does not go to the root of the appointment.

15. In Case of B.N. Nagarajan Vs. State of Karnataka reported in (1979) 4 SCC 507, the Supreme Court referring to the word “regularization” held that it meant to condone any procedural irregularity in order to cure only such

defects that are attributable to methodology, followed in making the appointment.

16. In view of the facts noted above with respect to the petitioner's case, I have no hesitation in coming to a finding that petitioner's initial appointment cannot be termed to be irregular rather it is apparently illegal and unconstitutional.

17. Referring the judgments of Supreme Court in case of **S. V. Narayanappa (supra) and R.N. Nanjundappa Vs. T. Thimmiah (supra), the Supreme Court in Case of Uma Devi (3)** (supra) held in paragraphs 52 and 53 as follows:-

"52. Normally, what is sought for by such temporary employees when they approach the Court, is the issue of a writ of mandamus directing the employer, the state or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitutional Bench of this Court in Rai Shivendra Bahadur (Dr.) V. Governing Body of the Nalanda College 34. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the Statute imposes a legal duty on the authority and the aggrieved party had a legal right under the Statute or

rule to enforce it. This classical position continued and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanppa 11, R.N. Nanjundappa¹² and B.N. Nagarajan⁸ and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Government and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but

there should be no further bypassing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

18. In paragraph 54 of its decision in case of Secretary, State of Karnataka Vs. Uma Devi(3) (supra), the Supreme Court held in Uma Devi (3) that all other decision which ran counter to the principle settled down in the said decision or in which directions running counter to what came to be held in case of Uma Devi (3) would stand denuded of their status as precedents.

19. Learned counsel appearing on behalf of the petitioner has laid much emphasis on the resolution dated 16.3.2006 issued by the Personnel and Administrative Reforms Department, Government of Bihar in support of his submission that the Government of Bihar itself decided to regularize the services of daily wage employees, engaged prior to 11.12.1990.

20. For the reason that the said decision run counter to a the Supreme court decisions in case of ***Uma Devi (3) (supra)*** and subsequently, the Supreme Court in case of ***Satya Prakash Vs. State of Bihar reported in***



(2010) 4 SCC 179 considered paragraph 53 of the Supreme Court decision in case of ***Uma Devi (3) (supra)*** and held that the Supreme Court had allowed one-time measure for absorption of daily wagers who were engaged in 'irregular' manner and not in illegal manner, I do not find any merit in this case. Recently, in a Full Bench decision of this Court reported in **2013 (1) PLJR 964 (Ram Sevak Yadav Vs. State of Bihar)**, this Court has held that if the initial engagement itself was not in conformity with Articles 14 and 16 of the Constitution of India, there would be no question of granting permanent status to employees engaged on daily wage basis, irrespective of the period for which they worked as daily wage employees.

21. In view of the discussions as above, I am of the opinion that the petitioner has not been able to make out a case that he has an enforceable legal right to be permanently absorbed in Government service or the State of Bihar has a legal duty to make him permanent. In such circumstance, in my opinion, no mandamus can be issued in the facts and circumstances of the present case, as sought for by him, keeping in mind the fact that the petitioner's initial engagement cannot be termed to be irregular as it was

evidently illegal and unconstitutional.

22. I do not find any merit in this application. This application is accordingly, dismissed.

23. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--