

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1690 of 2013

IN

Civil Writ Jurisdiction Case No. 2678 of 2013

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1. Ashok Kumar Sharma, son of Chhedi Mistri, resident of Ghagha Gali, Old Mahavir Asthan, Patna City, P.S.-Patna City, District-Patna.
 2. Jang Bahadur Singh, son of Prithviraj Singh, at present residing at Lodipur, P.S.-Kotwali, District-Patna, at present residing at Salimpur Ahra, Gali No.3, Dwarika Nath Lane, P.S.-Gandhi Maidan, District-Patna.
 3. Suresh Thakur, son of Late Sita Ram Thakur, resident of village-Manikpur Pakri, P.O.-Manikpur Pakri, P.S.-Lalganj, District-Vaishali.
- Petitioners/Appellants.

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
 3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
 4. The Secretary, Road Construction Department, Government of Bihar, Nirman Bhawan, opposite New Secretariat, Patna.
 5. The Chief Engineer, Central Design Organization, Road Construction Department, Government of Bihar, Nirman Bhawan, opposite New Secretariat, Patna.
 6. The Director, Testing and Research Institution, Nirman Bhawan, opposite New Secretariat, Patna.
- Respondents/Respondents.
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Appearance :

For the Appellants : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Amish Kumar, Adv.

For the Respondents : Mr. S.Raza Ahmad, AAG-IX
Mr. Vishwambhar Prasad, AC to AAG-IX.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 14-09-2015

The three appellants were the writ petitioners to the writ petition which was dismissed by the learned Single Judge. They had approached this Court for their regularization and for setting aside the order by which their earlier regularization in the service of the State Government had been set aside upon review.

- 2 -

Today, a counter affidavit has been filed which is on record. Heard learned counsel for the appellants, learned counsel for the State and with their consent, this appeal is being disposed of at this stage itself.

The facts of this case are not in dispute. The three writ petitioners/appellants were recruited at different times on daily wages as “Khalasi” in the Central Design Organization, Road Construction Department, Government of Bihar. They worked in between 01.01.1985 to April, 1988, in all, for a period in excess of 240 days. They had approached this Court earlier for their regularization, which writ petition was disposed of in the year 2004 with a direction to the authorities to consider their cases and take appropriate action. Accordingly, they were regularized vide office order dated 22.12.2006, which office order was issued by the Deputy Secretary to the Government in the Road Construction Department, which was Annexure-6 to the writ petition. Their regularization was short lived inasmuch as on 23.03.2011, they were issued with a show cause to show as to why their regularization be not withdrawn and/or cancelled, being contrary to the resolution no.639 dated 16.03.2006 of the Government and, upon receipt of the cause shown, by the impugned order dated 02.01.2013 (Annexure-7 to the writ



- 3 -

petition), their regularization order issued earlier on 22.12.2006 was cancelled. This is what brought them to this Court.

The learned Single Judge noted that combining the period of work from 01.01.1985 to April, 1988, the writ petitioners had worked for 240 days. They had not worked for 240 days per year in last five (5) years, which, as per the learned Single Judge, was the requirement of the resolution for regularization taken on 16.03.2006. That being so, the learned Single Judge held that the writ petitioners/appellants were irregularly and illegally regularized. Accordingly, the writ petition was dismissed.

Being aggrieved by the order of the learned Single Judge, this appeal has been filed against the aforesaid order dated 29.10.2013 passed in C.W.J.C. No.2678 of 2013 (Ashok Kumar Sharma and others Vs. the State of Bihar and others).

Learned counsel for the appellants submits that the history of the action taken by the State Government, for regularization on daily wages employees, if taken into account, would show that there are two classes of employees. He first draws attention of this Court to the resolution of the State Government being resolution no.5940 dated 18th June, 1993 in this regard. Here, it clearly mentions that the State Government



- 4 -

had issued cut off date as 01.08.1985 that henceforth there would be no recruitment on daily wages after cut off date. Therefore, it was decided that regularization would be done only in respect of those daily wagers who had been employed for 240 days prior to 01.08.1985, but number of Government Employees Trade Union raised various demands, especially in view of the fact that notwithstanding the aforesaid restriction put by the State Government, due to exigency of work and non-recruitment, large number of people had been employed even after 01.08.1985 on daily wages. Having considered the demand of the Employees Trade Union, whereby the earlier benefit of regularization of daily wagers of which the cut off date was 01.08.1985, this was extended up to 11.12.1990, which is evident now from resolution of the State Government dated 16.03.2006 (Annexure-2 to the Letters Patent Appeal). Thus, all those persons, who had been employed on daily wage but had not worked for 240 days up to 11.12.1990, were held to be liable to be regularized as such, provided they had worked on sanctioned vacant posts. This was one category, which was covered by the earlier Government resolution as extended, pursuant to trade union agreement. It is then pointed out and rightly so, in our view, the other category of daily wagers, who were to be considered for regularization, were



- 5 -

those who were appointed after 11.12.1990 may be up to 2006.

It is in respect of these that new stipulation in the resolution of 2006 was laid down that they would be required to complete 240 days per year for five (5) continuous years for their regularization. It is submitted by the appellants that they are in the first category and not in the second category. Considering that they, as the first category, had been regularized by the conscious decision of the State Government, without noticing or realizing the difference, the regularization order has been withdrawn putting them in the second category. It is submitted that the learned Single Judge did not appreciate those distinctions and this categorization. It is also pointed out that this dichotomy of two categorizations was noticed by the department and a clarification was sought for from the Personnel Department. The clarification was that all employees employed on daily wages would have to satisfy the condition of having worked for 240 days per year for five (5) continuous years. What was the reason for this singular condition was not explained?

Having considered the matter, in our view, learned counsel for the appellants is correct. Considering the history of events up to 1990, as noted above, what was considered for regularization was a daily wager having worked for more than



- 6 -

240 days simplicitor, was the earlier State Government decision and which had been extended pursuant to trade union agreement. This was also in consonance with the resolution of the State Government in the Personnel Department dated 10.05.2005, which is a part of the proceedings itself. This clearly shows that right till the year 2005, State was only contemplating regularization with restriction that the said daily wager must have worked for 240 days. There was a clear distinction maintained when the 2006 resolution was taken. There were two classes. First, where the State Government was bound by the trade union agreement in respect of daily wagers up to 11.12.1990 and second those who came thereafter. Therefore, there were two different categorizations in this resolution dated 16.03.2006. It is wrong to say that there was conflict between the Clause-1 of the said resolution and Clause-3. The two contemplated two different periods. The writ petitioners/ appellants, falling within the first period i.e. till 11.12.1990, were rightly treated and regularized as per Annexure-6 to the writ petition with effect from 22.12.2006. This distinction was not brought out clearly before the learned Single Judge because of which the learned Single Judge applied Clause-3 of this resolution, which applied to only those people who had joined as



- 7 -

daily wagers after 11.12.1990.

Having considered the matter, in our view, the impugned order, being Annexure-7 to the writ petition, recalling the regularization order dated 22.12.2006 (Annexure-6 to the writ petition), is set aside. The effect would be that the three writ petitioners/appellants would be deemed to be working duly regularized vide Annexure-6 to the writ petition. As their services are terminated by Annexure-7 dated 02.01.2013 and have not worked since then, upon their reinstatement, they would be deemed as regularized employees but they would not get any back wages. They would be reinstated within two months from today. They would also be entitled to continuity in service.

With the aforesaid observations and directions, this appeal is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/AFR

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