

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14913 of 2008

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1. Naresh Mandal, son of Sri Parmeshwar Mandal, resident of village and post Lailakh, P.S. Sabour, District Bhagalpur
 2. Pramod Kumar Singh son of Sri Naresh Prasad resident of village Budh Chank Bind Toli Post Karari Tintanga P.S. Gopalganj, District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Commissioner, Bhagalpur Division, Bhagalpur
 3. The District Magistrate, Bhagalpur
 4. The District Relief Officer, Bhagalpur
 5. The Deputy Collector Establishment Bhagalpur Collectorate, Bhagalpur
 6. The Sub Divisional officer, Naugachhiya Sub Division District Bhagalpur
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Singh

For the Respondent/s : AC to AAG No. 5

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-09-2015

Heard learned counsel for the petitioners and learned AC to AAG No. 5.

Two petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an Order contained in Memo No. 4206 Dated 17.10.2006 issued by the District Magistrate, Bhagalpur, whereby the claim of the petitioners for their regularization in service has been turned down. It has further been prayed to direct the Respondents to regularize services of the petitioners in Bhagalpur Collectorate.



The petitioners along with others had earlier approached this Court for the same relief i.e. for direction for considering their case for regularization vide CWJC No. 10036 of 2004. The said writ petition was disposed of on 25.7.2006 with a direction to the Collector, Bhagalpur to consider the case of the petitioners for regularization against sanctioned post on which they were working since long. After the order was passed by this Court, the petitioners represented before the Collector and thereafter, the impugned order i.e. Annexure - '1' has been issued vide Memo No. 4206 Dated 17th October, 2006 and claim for regularization of the petitioners has been rejected.

Learned counsel for the petitioners submits that the petitioners are working as Daily Wager since long and there are already vacancies available and as such, direction may be given to consider to fill up the vacancy and consider the cases of the petitioners for their appointment.

Learned State Counsel has opposed the prayer of the petitioners.

In this case a counter affidavit on behalf of the respondent no. 3 and 5 has been filed which has also been replied by the petitioners.

Besides hearing learned counsel for the parties I have also perused the materials available on record. So far the impugned order



is concerned, after examining the same the Court is of the opinion that no error has been committed by the learned Collector in rejecting the claim for regularization. From the order impugned it is evident that the petitioner no. 1 started working as Daily Wager with effect from 6.12.1994 whereas the petitioner no. 2 was engaged as Daily Wager on 6.2.1999. Earlier there was Government instruction which suggested that if Daily Wager engaged prior to 1985 had continued for at least five years and completed work for 240 days continuously their cases were required to be considered for appointment. The said Cut Off date i.e. 1.8.1985 was extended up to 11.12.1990. Meaning thereby, that the person engaged after the Cut- Off date i.e. 11.12.1990 were not entitled to claim regularization. However, considering the fact that petitioners were engaged as Daily Wager after the Cut Off date the prayer for regularization has been rejected. There is no error in the impugned order. However, since a stand has been taken by learned counsel for the petitioners that petitioners are still working as Daily Wager continuously against the vacant post, while disposing of the writ petition it would be appropriate to observe that if there is sanctioned vacancy, the Respondents may take appropriate step to fill up the same by making appointment in accordance with law. While considering fresh appointment petitioners case may not be rejected on the ground of age bar.

The writ petition with above observation stands disposed of.

(Rakesh Kumar, J)

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