

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20023 of 2011

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1. Bhawesh Sharma , S/o late Kamo Sharma, R/o Mohalla Murarpur, P.S. Nathnagar, District - Bhagalpur.
 2. Bikram Mandal, S/o late Daya Mandal, R/o Village Basudevpur, P.S. Basudevpur, District - Munger.
 3. Shiv Narayan Mandal, S/o late Pachu Mandal, R/o Village Chandi Asthan, P.S. Basudevpur, District - Munger.
 4. Vijay Ram, S/o late Amrit Ram, R/o Chottikala Bandh, P.S. Kotwali, District Munger.
 5. Lucho Mandal, S/o late Chotelal Mandal, R/o Village Shyampur, P.S. Kharagpur, District Munger.

.... Petitioners

Versus

1. The State of Bihar through the Chief Executive Officer, Zila Parishad, Munger.
2. The Director, Panchayati Raj, Government of Bihar, Patna.
3. The Deputy Director, Panchayati Raj, Government of Bihar, Patna.
4. The Deputy Development Commissioner -cum- Chief Executive Officer, Zila Parishad, Munger.
5. The District Magistrate, Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bibhuti Narayan Pandey, Sr.Adv.
 Mr. Praveen Kumar Sinha, Adv.

For the Respondent/s : Mr. Ritesh Kumar, S.C. - 33
 Mr. S.D. Yadav

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-05-2016

Heard Sri Bibhuti Narayan Pandey, learned senior counsel, who was assisted by Sri Praveen Kumar Sinha, learned counsel for petitioners, Sri Ritesh Kumar, learned Standing Counsel - 33 as well as Sri S.D.Yadav, learned counsel appearing on behalf of respondent no. 4/Zila Parishad, Munger.

2. At the very outset, learned senior counsel for

petitioners submits that since petitioner no. 3 & 5 had not completed the required period for regularization, he is not pressing the writ petition, so far as petitioner no. 3 & 5 are concerned.

3. Accordingly, the writ petition so far as petitioner no. 3 & 5 is concerned, is, hereby, rejected.

4. The petitioners (petitioner no. 1, 2 & 4), invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an order dated 25-08-2011 passed by a duly constituted committee headed by the District Magistrate, Munger, which was constituted in compliance with order dated 12-07-2010 passed in C.W.J.C. No. 9985 of 2010 by a coordinate Bench of this Court to consider the cases of petitioners for making recommendation for their regularization.

5. As per the writ petition, the petitioners were appointed on different dates from 1981 to 1985, as daily-wager, in the office of Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Munger. Since they were continuously working and their work was satisfactory, the respondent no. 4 by its order contained in Memo no. 5 dated 28-01-2009 (**Annexure - 3** to the writ petition) took a decision to adjust their services in the regular establishment. All the five petitioners were regularized in service subject to approval by the



State Government. It was indicated that in view of Government resolution no. 489 dated 10-05-2005, the decision was taken for regularization of daily-wagers, who had completed 240 days continuous service. Since after the order contained in Annexure - 3 to the writ petition whereby they were regularized against sanctioned and vacant post in particular pay-scale, they were not being paid their salary, they approached this Court by filing a writ petition, vide C.W.J.C. No. 9985 of 2010. A Bench of this Court after hearing the parties disposed of the writ petition in the following term:-

“Heard learned counsel for the petitioners and the counsel for the State who has filed counter affidavit duly affirmed by the Deputy Secretary, Panchayati Raj Department. Also heard counsel for the Zila Parishad, Munger.

2. Petitioners are aggrieved by the conduct of the Zila Parishad, Munger as the Zila Parishad is not releasing salary of the petitioners in the light of the order bearing Memo No. 05 dated 28.1.2009, Annexure-2, whereunder petitioners and others have been regularized in the scale of Rs. 2550-3200/- in the light of the instructions of the State Government contained in resolution dated 10.5.2005. Having regularized the services of the petitioners in the aforesaid scale the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Munger under letter no. 16 dated 31.1.2009, Annexure-3 requested the Director, Panchayati Raj to approve the regularization of the petitioners in the aforesaid scale as also to release fund for payment of salary to them.

3. It appears from the counter affidavit of the Deputy Secretary that the Panchayati Raj Department and its Director did not respond to the request of the Deputy Development Commissioner contained in letter dated 31.1.2009, Annexure-3 as Panchayati Raj Department and its Director were of the view that the regularization of the petitioners in the aforesaid scale was not recommended by the Committee of the officers to be constituted in the light of the circular of the Government bearing no. 639 dated 16.3.2006,

Annexure-A to the counter affidavit. Sub-clause (iii) of Clause (3) of the said circular provides that the Committee be presided over by the District Magistrate of the area where the regional office is situate.

4. Counsel for the Zila Parishad submitted that Zila Parishad is an autonomous institution constituted under the Bihar Zila Parishad Act and is headed by the Deputy Development Commissioner-cum-Chief Executive Officer yet Zila Parishad, Munger does not have any objection if the Committee presided over by the District Magistrate looks into the regularization of the daily-wagers serving in the Zila Parishad, Munger. 5. Having heard counsel for the parties, I direct the District Magistrate, Munger to constitute the Committee, as is provided under sub-clause (iii) of Clause (3) of the circular letter dated 16.3.2006 and consider the case of the daily-wagers serving in the Zila Parishad, Munger and make necessary recommendation on the basis of which the State Government should act within a reasonable time, in any case within a period of three months from the date of its receipt. It is made clear that if the petitioners are again recommended for regularization then their regularization must date back to the date from which they have been earlier regularized. The District Magistrate should submit his recommendation within a reasonable time, in any case within a period of two months from the date of receipt/production of a copy of this order.

6. The writ application is, accordingly, disposed of."

6. Since even after the order of this Court whereby time frame was fixed for taking final decision, the respondents had not taken any step, the petitioners were constrained to approach this Court by filing a contempt petition, vide M.J.C. No. 86 of 2011. During the pendency of the contempt petition, the respondents came out with an order contained in Memo no. 511 dated 25-08-2011 (Annexure - 1) and informed the Court that case of petitioners was considered for regularization and same was rejected. In the



contempt proceeding itself, a plea was taken on behalf of the petitioners that the decision of the committee has incorrectly been taken due to the reason that circulars which were issued with prospective effect were taken note by the committee and case was rejected. This Court by its order dated 08-09-2011 disposed of the contempt petition with an observation that all the points can be considered if the order contained in Memo No. 511 dated 25-08-2011 is challenged by the petitioners by filing another writ petition. Only thereafter, the present writ petition has been filed assailing the decision of the committee, contained in **Annexure - 1** to the writ petition.

7. Sri Pandey, learned senior counsel for the petitioner by way of referring to running page 15 submits that the petitioner no. 1, 2 and 4 had continued to work from cut off date continuously for five years, however; only on the ground that in terms of government resolution dated 31-03-2011 for the post of Peon, minimum qualification i.e. 10th pass was not acquired by the petitioners, their cases have been turned down.

8. It has been emphatically argued that once the writ court by its order dated 12-07-2010 had issued specific direction to the District Magistrate, Munger to constitute a committee, as provided under sub-clause (iii) of Clause 3 of circular dated



16-03-2006 and consider the case of daily-wagers serving in the Zila Parishad, Munger, the said committee was only required to examine the circular or instruction/resolution, which was applicable on the date of order passed by this Court. In sum and substance, it has been argued that the committee has miserably erred in considering subsequent resolution of the year 2011 in rejecting the claim of petitioners on the ground that they were not 10th pass, whereas, as per the existing provision, an 8th pass candidates were eligible to be regularized in terms of resolution of the year 2006. Accordingly, a prayer has been made to allow the writ petition, so far as petitioner no. 1, 2 and 4 is concerned.

9. Sri Ritesh Kumar, learned Standing Counsel – 33 has opposed the prayer of the petitioners and referring to averment made in the counter affidavit filed on behalf of respondent no. 4 & 5 submits that no error has been committed by the Committee. It has been reiterated that on the date of consideration for regularization, whatever provision was available, that was required to be taken note of and as such, since on the date of consideration, only 10th pass candidate was eligible to be considered, the committee has rightly considered the case and rejected the case of petitioners in absence of requisite qualification.

10. Sri S.D.Yadav, learned counsel appearing on behalf



of respondent no. 4/Zila Parishad accepts that earlier, subject to approval of the State Government, decision was taken to regularize the services of the petitioners, however; the regularization was to be considered by a duly constituted committee, in view of resolution of 2006, which was to be headed by the District Magistrate. He submits that in terms of the resolution after the order dated 12-07-2010, the committee was constituted and considered the case.

11. Besides hearing learned counsel for the parties, I have also perused the material available on record. In the present case, the relevant date, in the opinion of the Court, would be the date on which earlier writ petition was disposed of directing the District Magistrate to examine the cases of regularization. Meaning thereby that whatever rule/regulation/instruction was available on the date of the order, was only required to be taken note of. Prima facie, the Court is satisfied that the committee has incorrectly relied on resolution dated 31-03-2011 and rejected the claim of petitioners on the ground that they were not having requisite qualification i.e. 10th pass. Fact remains that on the date of passing of the order i.e. 12-07-2010, candidates, who had passed Class VIII, were entitled to be considered for regularization and as such, the committee was required to examine the case, as per the qualification, which was available i.e. 8th pass.

12. Accordingly, the order impugned to the extent of rejection of claim of petitioners for regularization only on the ground that they were not 10th pass is, hereby, set aside and matter is remitted back again to examine the cases for regularization. Prima facie, as per column no. 7 of the decision of the committee, the petitioner no. 1, 2 and 4 had completed the requisite period for regularization and since they were well-qualified for being considered for regularization, the respondents are directed to take appropriate decision regarding the regularization of the petitioner no. 1, 2 and 4, in view of resolution of the year 2006.

13. All the formalities must be completed within a period of three months from the date of receipt/production of a copy of this order.

14. It goes without saying that while taking decision, they will abide by the direction of this Court dated 12-07-2010 passed in C.W.J.C. No. 9985 of 2010 regarding giving effect to regularization from the date.

15. The writ petition stands allowed.

(Rakesh Kumar, J.)

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