

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14074 of 2013

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Sumitra Devi, wife of Ram Narayan Mahto, resident of C/O - Dasai Mahto,
Mohalla - Dujra, P.O. - G.P.O., P.S. - Kotwali, District - Patna

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Patna.
3. The Secretary (Technology), Water Resource Department, Patna.
4. The Chief Engineer, Central Design Organisation, Water Resource Department, Patna.
5. The Superintendent Engineer, Dam And Gate Design Division, Patna.
6. The Under Secretary, Water Resource Department, Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Gaurav Govind, Adv.

For the Respondent/s : Mr. Anjani Kumar, A.A.G.-7

Mr. Sanjay Kumar, A.C. to A.A.G.-7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-12-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner is challenging the letter No.162 dated 08.03.2010 and letter No.239 dated 01.04.2010, by which it has been held that the petitioner does not come within the definition of daily wage employee. The petitioner is also claiming for her regularization in service.

3. The petitioner was appointed as part time sweeper vide letter No.836 dated 15.09.1982 and thereafter vide letter No.482



dated 01.08.1989 she was made a daily wager from the date of issuance of letter. The petitioner is claiming that she has been discharging the duty without any break and still she is working and getting the salary from the respondent-authority.

4. The petitioner is claiming for regularization in service on the basis of the Resolution No.639 dated 16.03.2006, which has three parts. In first part, it has been provided that any person who has discharged the duty at least for 240 days prior to 11.12.1990 will be eligible for regularization in service. Second part provides for selection through the Staff Selection Commission and third part is related to the daily wager, who has been retrenched from the service and has worked for 240 days continuous for five years preceding the cut off date, will be entitled to the regularization in service.

5. In the counter affidavit, the State has factually not discredited the statement made in the petition, but claimed that the petitioner was a part time sweeper cannot be regularized in service.

6. In reply to the counter affidavit, the petitioner has taken a specific stand that from 01.08.1989 to 11.12.1990 she had discharged the duty for 240 days in each year, so she is eligible for regularization of service.



7. The interpretation and implementation of Resolution dated 16.03.2006 with respect to regularization in service came for consideration before this Court in the case of ***Ashok Kumar Sharma & Ors. Vs. The State of Bihar, through the Chief Secretary & Ors.***, reported in ***2016(1) P.L.J.R, 232***. In paragraph No.7, the contour of Circular came for consideration by the Court and the manner in which the Circular has been formulated and interpreted in a manner that a person who has discharged the duty for 240 days prior to cut off date will be entitled for regularization in service.

8. It will be relevant to quote paragraph No.7 of the said judgment, which reads as under:-

“7. 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 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 daily wagers after 11.12.1990.”

9. This issue again came for consideration before the same Bench in the case of ***Jai Kishun Ram & Ors. Vs. The State of Bihar & Ors.*** reported in ***2016(1) PLJR, 512***. There the Court has reiterated the earlier principle and in paragraph No.10 of the judgment it has been held as under:-

“10. We may note here that recently we have decided the issue in a similar case being Letters Patent Appeal No. 1690/2013 which was allowed on 14.09.2015 (Ashok Kumar Sharma and Others Vs. State of Bihar and Anr.) The situation there was also identical like the present appellants. Those appellants had also worked for more than 240 days prior to 11.12.1990 and they were also disentitled to regularization solely on the ground that for



five continuous years they had not worked for 240 days in every year. This court noticed the history of such a Resolution. It noted that on 01.08.1985, State had put a ban on employment on daily wage. Therefore, the first decision taken by the State in respect of regularization had been that all those who had worked for more than 240 days prior to 01.08.1985 had to be regularized. There was no restriction of 240 days per year for a period of five years. It appears that thereafter due to exigency of work and no regular recruitment, daily wagers were continued to be employed. They were not being considered for regularization, and as such, the Workers Trade Union started agitation and ultimately there was an agreement as between the Workers Trade Union and the State Government, whereby this cut off date of 01.08.1985 was extended to 11.12.1990. Thus, those daily wagers who had worked for more than 240 days prior to 11.12.1990 were liable to be regularized. This was apparent from the decision of the State Government dated 18.06.1993 which was then followed by Resolution dated 10.05.2005. The appellants were contending that in view of this they have right to be regularized. Considering the aforesaid history, there cannot be any doubt that as the appellants had worked for almost or over 1000 days prior to 1990, they were entitled to the benefit of this executive decision, but it seems while the matter was being considered by the Committee, the Government decision as envisaged by Resolution no. 639 dated 16.03.2006 came up. Keeping in mind the history, if we look at this Resolution, we find that it is in two parts, the first part clearly refers to the first cut off date of 01.08..1985 as extended to



11.12.1990 and the trade union agreement, which stipulates that any daily wagger who has worked for 240 days prior to the cut off date of 11.12.1990 would be entitled to be regularized.”

10. In view of the above, the impugned letter No.162 dated 08.03.2010 and letter No.239 dated 01.04.2010 are not sustainable and accordingly, the same are quashed. The respondent authorities are directed to consider the case of the petitioner for regularization in service within a period of three months from today. For convenience, the petitioner is directed to file a detailed representation before the competent authority, giving entire facts and inclosing the copy of the present order. If such a representation is filed, the concerned authority shall decide the same within a period of three months from the date of filing such representation.

11. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	09.12.2016
Transmission Date	

