

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18803 of 2013

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1. Md. Allauddin Son of Md. Ramjan Mian, resident of mohalla- Chhawanipar, Tekari, Police Station- Tekari, District- Gaya.
 2. Mithlesh Kumar Singh Son of Sri Satyadeo Singh, resident of village- Jagatyan, Police Station- Chapra, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, General Administration Department, Bihar, Patna
3. The Deputy Secretary, General Administration Department, Bihar, Patna
4. The Commissioner, Magadh Division, Gaya
5. The District Magistrate, Gaya
6. The Additional Collector (Land Acquisition), Gaya
7. The Sub Divisional Magistrate, Tekari, Gaya
8. The Circle Officer, Konch, Tekari, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Uday Narayan Singh and Rajesh Kumar

For the Respondent/s : Mr. S.Rahman, AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-08-2016

Heard the parties.

In this case, petitioners are seeking quashing of order dated 30th March 2013 passed by the District Magistrate, Gaya regarding working period of the petitioners passed during the pendency of M.J.C. No. 5195 of 2011 (arising out of C.W.J.C. No. 2123 of 2011) and M.J.C. No. 5273 of 2011 (arising out of C.W.J.C. No. 1088 of 2011) and further sought relief for regularisation of their service on the post of Driver in the Collectorate, Gaya and its attached office in pursuant to Memo. No. 690 dated 26th April 2010 in view of

the judgment reported in (2006) 4 SCC 1 (*Secretary, State of Karnataka and others vs. Umadevi [3] and others*).

Petitioners are claiming that they are the daily wages employees, discharging the duty of driver with the attached offices of Collectorate from 1997 and 1998 respectively and they are not being regularised in service. Their claim is based upon the judgment of Umadevi case (supra) submits that they have been working as Driver for last 15 years without any intervention of the order of any Court, in such circumstances, the Authority should consider their case for regularisation in service.

In the writ petition, it has been submitted that petitioners no. 1 is working in the office of Circle Officer, Konch, Gaya and petitioner no. 2 is working in confidential section of District Establishment, Gaya. Repeatedly petitioners have been requesting for their regularisation in service, but always they have been deprived of their right of regularisation on one ground and another, branding them that they are not entitled for any relief for regularisation, as they do not qualify the conditions mentioned in Umadevi case (supra) or the Notification issued by the State of Bihar from time to time.

It is not the first time, petitioners have approached this Court, but earlier both the petitioners have moved before this Court. Petitioner No. 1-Md. Allauddin has earlier moved before this



Court in C.W.J.C. No.2123 of 2011 and petitioner No. 2-Mithilesh Kumar Singh has moved before this Court in C.W.J.C. No. 1088 of 2011, both the cases were disposed of with a direction to the District Magistrate to take decision about regularisation within four months from the date of receipt/production of the copy of the order. When the orders were not complied with, both the petitioners approached this Court in contempt proceeding which were registered as M.J.C. No. 5195 of 2011 (Md. Allauddin vs. State of Bihar and others.) and M.J.C. No. 5273 of 2011 (Mithilesh Kumar Singh vs. the State of Bihar and others), both the cases were heard together and the Court recorded that the District Magistrate does not even bother to verify the records and has gone totally by the inputs provided by the Block Development Officer or Officers, obviously, the trust and faith imposed on the District Magistrate stands belied and the matter was remanded back to the District Magistrate to re-look on the issue after hearing the petitioners, verifying the materials which have been placed before this Court again compare the same with the inputs which have been provided by the Block Development Officers. If there is a dichotomy then the benefits have to accrue in favour of the petitioners and the same ought not to be brushed aside casually. This Court in MJC No. 5195 of 2011, quashed the order dated 07.02.2013 in view of the fact that the Court found that the District Magistrate is

misleading the Court by filing the material evidence which do not stand to the judicial scrutiny whereupon the District Magistrate has recorded the number of days performed by them on the basis of materials supplied by the office concerned as well as materials supplied by petitioners.

The order of the District Magistrate dated 30.03.2013 shows conflicting version about the number of days recorded in two tables, one on the basis of materials supplied by the offices and another on the basis of material supplied by petitioners.

As it appears from the table, Md. Allauddin has worked, as per materials supplied by him, upto 2006 but as per record of department upto 2007 for 74 days and Mithilesh Kumar Singh has been shown to have performed the duty for zero days in the year 2013 as per material supplied by him and 26 days as per the materials supplied by the office.

The counsel for the petitioners submits that actually petitioners have been working althrough, but the office is not coming forward with a clean hand and suppressing all materials which are favourable to them. In support of contention, petitioners have produced large number of documents showing that they have been working regularly and are being paid salary by the establishment concerned.



The State has filed the reply to the supplementary affidavit filed on behalf of the petitioners, but nowhere the State has disputed the materials produced by the petitioners. As prima facie it appears, the documents brought before this court cannot be said to be any fake and forged documents, but in a writ jurisdiction it is very difficult for this Court to record a positive finding.

For the ends of justice, this Court relegates this case to the Divisional Commissioner, Gaya, who will call for all the documents from the respective offices as well as the petitioners will have liberty to produce the documents which are in their possession. The petitioners will be allowed to place their cases themselves or through their lawyers so that there will be a complete compliance of a natural justice.

In such view of the matter, the Divisional Commissioner is directed to examine the case of the petitioners and record positive finding by passing the reason order. If the Commissioner arrives to a finding in favour of the petitioners then certainly the Commissioner is directed to take action in terms of paragraph 53 of the judgment of the Hon'ble Supreme Court, Uma Devi case (supra). All the actions should be completed within four months from the date of receipt/production of a copy of this order. During the pendency if the petitioners are working, the authority will

not take any action prejudicial to the interest of petitioners.

With the above observation/direction, this writ
petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.08.2016
Transmission Date	