

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5711 of 2015

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1. Mithilesh Mishra son of Lakhan Mishra, resident of village + Post- Darkha, P.S.-
Sikandra, District- Jamui.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Jan Shiksha (Mass Education), Education Department, Govt. of Bihar, Patna.
4. The District Education Officer, Jamui.
5. The District Programme Officer (Saksharta), Jamui.
6. The District Programme Officer (Establishment), Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Sharma
For the Respondent/s : Mr. Nikhil Kr Agrawal, AC to GA 1
Ms Aditi Hansaria, AC to GA 1

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 18-11-2016

The prayer of the petitioner for a direction for regularization is required to be rejected on the threshold because the working of the petitioner as a daily wager and his engagement does not seem to be on the basis of any kind of proper procedure having been followed in the very first place. The details of the so-called working of the petitioner annexed with the writ application also indicates that he has been working under various authorities in various capacity which also is an indication that he has been tumbling around from one organization or the other, may be taking advantage of his exposure to government organization and his experience.



The initial hiring, even if it is accepted in terms of Annexure-1, is an unusual kind of engagement emerging from reading of Annexure- 1. The engagement was meant for a limited period and purpose and that is why the petitioner seems to have ended up in other organization as well which have had no correlation with either the Sarva Shiksha Abhiyan or with the Department of Education, Government of Bihar.

Counsel for the State further submits that keeping in mind a recent decision rendered by a Division Bench in the case of **State of Bihar versus Ram Badan Singh, reported in 2016 (4) PLJR 596** and especially what the Division Bench had to say in paragraphs 10 and 11, no case for a direction is made out in favour of the petitioner. The relevant paragraphs read as under :

*10. Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellants. The writ petitioners having worked intermittently during the period 1980-85 cannot have any legal right to claim regularization/absorption of their services. The undisputed position is that even such engagement of the writ petitioners as daily wagers was without following any procedure prescribed in law much less through open advertisement. The Hon'ble Supreme Court in the case of **Union of India v. Pradeep Kumar Saxena** reported as **1995 Supp (4) SCC 69**, has held that a daily wager holds no post and therefore the question of his regularization does not arise. Despite this, in view of various orders having been passed by the Courts for regularization, the matter was finally settled by the Constitution Bench of the Hon'ble Supreme Court in the case of **State of Karnataka vs.***



Uma Devi (3) reported as (2006) 4 SCC 1, in which at paragraph-43 it has been held that daily wagers, contractual appointees and casual labourers do not hold a post and therefore have no claim for regularization. However, directions were issued for regularization of such persons in terms of the observations contained in paragraph-53 of the said judgment as a one time measure for those who may have completed ten years in that capacity. The Hon'ble Supreme Court clarified and reiterated the position in the case of **State of Karnataka vs. Ganpathi Chaya Nayak** reported as (2010) 3 SCC 115 and **Satya Prakash vs. State of Bihar** reported as (2010) 4 SCC 179, that daily wagers were not entitled for consideration under paragraph-53 of the judgment in **Uma Devi** (supra).

11. In the case of **Satya Prakash** (supra), the appellant who had worked for more than 10 years on daily-rated basis in the Bihar Intermediate Education Council had approached this Court for regularization of his service and a learned Single Bench of this Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. In the appeal preferred before the Division Bench, it was held that merely because they had worked as daily wage employees with the Council would not confer any right for regularization as no public appointment was permissible dehors the recruitment rules. The Letters Patent Appeal was, therefore, dismissed in limine. Aggrieved by the same, the appeal was referred before the Supreme Court and after considering the Constitution Bench judgment in the case of **Uma Devi (3)** (supra), it was held at paragraph-12 to the following effect:

“12.The Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily wagers and those who were appointed irregularly in the sense that there was non-compliance with some procedure in the selection process which did not go to the root of the selection process.

The appellants in our view will not fall in the category of the employees mentioned in para 53 read with paras 15 and 16 of the Constitution Bench judgment.”

Law being what it is writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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