

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11856 of 2013

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Naresh Paswan son of Ramcharitra Paswan, resident of village –Ramnagara, PS-Riga, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Old Secretariat Patna.
3. The Finance Secretary, Govt. of Bihar, Patna
4. The Commissioner, Tirhut Division Muzaffarpur
5. The Magistrate-cum-Collector, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumod Kumar Srivastava

For the Respondent/s : Mr. Indradev Prasad, SC-27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 25-10-2016

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

In this case, the petitioner is seeking relief of regularisation in service as has been claimed by him that he has been working on class-IV post on daily wages basis from the year 1988.

It appears that the Respondent has gone for exercise of regularisation by seeking application from the persons who were discharging the duty on daily wages.

A panel of daily wages employees was prepared for their regularisation in service in the year 2005, but the name of the petitioner was not there, against that, he has not moved anywhere and thereafter, no panel has been prepared. The petitioner has claimed



regularisation on the ground that he has discharged the duty as daily wages employees for more than 240 days, basis his claim on Executive Instruction of 2006 which came for consideration on judgment reported in **2016 (1) PLJR 512 (*Jai Kishun Ram vs. State of Bihar*)** there the Court has considered the scope and parameter for regularisation of service in terms of Circular issued from time to time and has interpreted the Resolution no. 639 dated 16.03.2006 and has held in what manner, the Circular has been framed and it has been held that 2006 Circular has two parts, one part only confines to 240 days preceding and second part deals with 240 days preceding for five years. It will be relevant to quote paragraphs 10 and 11 of the said judgment, which are as follows:-

Para-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 wager who has worked for 240 days prior to the cut off date of 11.12.1990 would be entitled to be regularized.

Para 11- *It is this part of the Resolution that has been ignored by the Committee and apparently not brought to the notice of the learned Single Judge. This was sufficient to grant relief to the appellant instead the Committee though noted various contents of this Resolution including the limitation of 240 days prior to 11.12.1990 but then ignoring its applicability jumped to Clause 3(i) of the Resolution providing for 240 days of working in five consecutive years on yearly basis. As we have pointed out that this condition would be applicable*



to cases who come after the cut off date of 11.12.1990, that would not at all be applicable in case of the appellants. This is what we have held in the case of Ashok Kumar Sharma (supra). This is clearly applicable to the present case. They are being regularized after a long delay and they would be granted continuity of service, but they would not be entitled to any financial benefit for the period they have not worked.”

Learned counsel for the State submits that this petition is barred by limitation as it has been filed after three years so Article 113 of the Limitation Act will apply in the present case.

On perusal of Article 113 of the Limitation Act, it appears that Article 113 of the Limitation Act is not applicable in the present case, it will only be applicable in the proceeding of the suit, not for the proceeding of the writ petition so submission of the State is not accepted. The State has placed reliance on judgments reported in 2014 (3) SCCD 1166, 2014 (2) SCCD 680, 2014 (4) SCCD 2211, (2008) 5 SCC 444, AIR 1997 SC 2724 and 2015 (4) BLJ 202, which are not applicable to the fact of this case as it has been given in the context of the suit, not for the proceeding of the writ petition.

Accordingly, the contention of the State has no relevance in the present case. So far issue of giving a mandamus, this Court

cannot give such direction. The petitioner first time has approached this Court for regularisation, there may be certain persons who were senior to the petitioner, if any regularisation is made of class-IV employees, the case of the petitioner would be considered giving weightage of his past service. If any selection is made in terms of 2010 Rules and the petitioner applies against that vacancy, his case would be considered in accordance with law.

With the above observation/direction, this petition is dismissed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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