IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10086 of 2013

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1. Ramesh Mishra Son Of Late Shaligram Mishra At Present Residing At Vijay Nagar, P.S.- Banka, District- Banka

.... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Minor Irrigation Department, Govt. Of Bihar, Patna
3. Engineer In Chief, Minor Irrigation Department, Govt. Of Bihar, Patna
4. Chief Engineer, Minor Irrigation Department, Bhagalpur
5. Superintending Engineer, Minor Irrigation Department, Bhagalpur
6. Executive Engineer, Minor Irrigation Division, Bhagalpur
7. Sub Divisional Officer, Minor Irrigation, Sub Division (Vijay Nagar), Banka

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajiv Kumar Singh, Advocate.
For the Respondent/s : Mr. Kamlesh Kumar Sharma, AC to SC 22

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 28-03-2016

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

2. In the present writ petition, petitioner is challenging letter no.801 dated 9.5.2013 passed by the Executive Engineer, Minor Irrigation Division, Bhagalpur by which the claim of the petitioner for regularisation in service has been rejected on the ground that he has been brought in the work charge establishment vide letter no. 1756 dated 7.12.1984 and there is no permanent post of Chaukidar.

3. In the present case, petitioner is claiming that he was

appointed as a Chaukidar on 15.6.1978 in the Minor Irrigation Department, Munger and later on looking to his performance he was brought in the work charge establishment vide memo no. 1857 dated 7.12.1984 and continued to work without being regularised in service, so much so petitioner has been made to superannuate with effect from 31.1.2014 which is apparently clear from letter no.170 dated 28.1.2014.

4. Claim has been made that on wrong premise the case of the petitioner for regularisation has been rejected without considering the fact that the Government from time to time has issued executive instructions whereby granted the benefit of regularisation to work charge employee as well as to daily wages employee. The Government of Bihar vide resolution no.5980 dated 18.6.1993 took the policy decision whereby it was decided to regularize the service of daily wages employee employed before 1.8.1985 having worked for 240 days, later on, there was agreement between the Government and representative of Union, the Government vide resolution no.639 dated 16.3.2006 extended the cut off date from 1.8.1985 to 11.12.1990, but placed the condition that those who worked for five years continuous 240 days will be considered for regularisation in service. In normal circumstances the persons who are daily wages does not have

indefeasible right to claim for regularisation as has been held by the Hon'ble Supreme Court in the case of Secretary State of Karnataka and others v. Uma Devi (3) and others, reported in (2006)4 SCC 1, same view has been reiterated in the case of Ram Sevak Yadav v. The State of Bihar, reported in 2013(1) PLJR 964. In both cases the Court is of the view that appointment through back door entry is not permissible, violates basic principle of Articles 14 and 16 of the Constitution of India and if they have entered into service through back door should be shown the same door. But here is the question when the Government has itself issued a notification giving a chance to those who have worked for 240 days for certain years mentioning cut off date, duty cast upon the authority to consider the case of candidates who qualifies conditions laid down in the executive instruction. In the case of Jai Kishun Ram v. State of Bihar, reported in 2016(1) PLJR 512 facts are that he continued as daily wage employee, approached authority for regularisation but the authority failed to respond positively. This Court took view that the Government notification on 16.3.2006 by which earlier cut-off date i.e. 1.8.1985 was extended by 11.12.1990 attaching qualification of those who worked for 240 days continuously for five years will be considered for regularisation in service.

5. In the case of Jai Kishun Ram (supra) similar view has been given that a daily wagers has no right to continue, simpliciter he cannot be regularised but the situation changes, once the Government takes an executive decision for regularisation then this executive decision creates a right in favour of the daily wagers though ipso facto does not have a right to claim regularisation of service. It will be relevant to quote paragraph 8 to 10 of the aforesaid judgment:

> 8. In the present case, there is no dispute that from time to time Government did take a conscious decision to regularize daily wagers. It had imposed certain conditions subject to fulfilling those conditions and subject to not falling within any of the disqualifying clause of the said resolution. A daily wager having been brought in sanctioned vacant post had to be regularized. There is no discretion in the matter left as has been held by the Apex Court in the case of **Hirday Narain Vs. Income Tax Officer, Bareilly** since reported in **AIR 1971 SC 33**; where discretion is coupled with the duty then it becomes imperative for a person to act and it does not remain discretionary in any way. Thus, on this ground, the learned Single Judge was clearly in error and submission of the learned counsel for the Sate cannot be accepted.
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> 9. Now, we have to see as to the correctness or validity of the decision as contained in Annexure – 1 to the writ petition, by which the Committee formed by the Government rejected the claim of the appellants for regularization. This Annexure – 1 being dated 08.09.2006, the Committee clearly noting the period for which the appellants had worked in the year 1986, 1987, 1988, 1989 and 1990 each one had worked for almost a thousand

days, if not more, but none of them had worked for more than 240 days in every year in the period of five years aforesaid. It is solely on this ground and no other, relying upon Clause 3(i) of the Government Resolution no. 639 dated 16.03.2006, that the claim of the appellants for regularization was rejected. Therefore, it becomes necessary for us to examine the said Resolution of the Government.

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 regularised."

6. Learned counsel for the State has submitted that in view of judgment in the case of State of Bihar v. Bimli Devi, reported in 2016(1) PLJR 452 the present writ petition does not survive. Bimli Devi case (supra) does not apply to this case as this case is purely for regularisation of service in terms of State Government circular.

7. Taking into consideration the aforesaid judgment, this Court is of the decisionthat the view that has been taken by respondent cannot be approved by this Court and accordingly letter no.801 dated 9.5.2013 is hereby quashed and the matter is remanded back to the respondents concerned to consider the case of the petitioner and take a positive decision within a period of three months from the date of receipt/production of a copy of this order and if the respondent arrived to a finding in favour of the petitioner he will be granted all benefits arising on account of

regularisation.

8. With the aforesaid observation this writ petition is allowed.

(Shivaji Pandey, J)

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