

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.692 of 2017

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1. Pandav Yadav Son of late Kishun Yadav Resident of Village Bajitpur-Chhipalia, P.S. Bahadurpur, District- Darbhanga.
 2. Hit Lal Yadav Son of late Jagat Yadav resident of Vill. Balha, P.S. Ashok Paper Mill, District Darbhanga.
 3. Ram Kripal Yadav Son of late Asharfi Yadav Resident of Village Ganj Bajitpur, P.S. Bahadurpur, District Darbhanga.
 4. Uchitlal Yadav Son of late Chalitar Yadav Resident of Village- Dhoi- navtol, P.O. Dhoi, P.S. Sadar, District- Darbhanga.
 5. Ram Chandra Mandal Son of late Tilak Mandal Resident of Village Bajitpur-Chhipalia, P.S. Bahadurpur, District- Darbhanga.
 6. Shatrughan Yadav Son of late Mahavir Yadav Resident of Village Bela- Yakub, P.O. Kabirchak, P.S. Bahadurpur, District- Darbhanga.
 7. Lakshmi Paswan Son of late Rghunath Paswan Resident of Village: Bajitpur, P.S. Bahadurpur, District- Darbhanga.
 8. Phuldeo Yadav Son of late Sita Ram Yadav Resident of Village Ganj Bajitpur, P.S. Bahadurpur, District Darbhanga.
 9. Tani Lal Yadav Son of late Asharfi Yadav Resident of Village Ganj Bajitpur, P.S. Bahadurpur, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Bihar, Patna.
4. The Commissioner, Darbhanga.
5. The Collector Darbhanga.
6. The Engineer-in-Chief Irrigation Creation, Water Resources Department, Patna.
7. The Chief Engineer, Irrigation Creation, Water Resources , Darbhanga.
8. The Executive Engineer, Western Koshi Canal Division, Darbhanga.
9. The Sub-Divisional Engineer, Western Koshi Canal Sub- Division- 1, Darbhanga.
10. The Sub-Divisional Engineer, Western Koshi Canal Mechanical Sub- Division , Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Narayan, Adv.

For the Respondent/s : Mr. Kunal Tiwari, A.C. to GA2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-07-2017



Heard Mr. Amarendra Narayan, learned counsel for the petitioners and Mr. Kunal Tiwari, learned A.C. to G.A.2 for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission.

The writ petition was initially filed praying for quashing of the order bearing memo No.505 dated 5.10.2016 issued under the signature of the respondent No.6 Engineer-in-Chief whereby an advisory has been issued by the Engineer-in-Chief to the Chief Engineer the respondent No.7 to take steps for absorption of the daily wage employees in the light of the stipulations present in the resolution bearing No.639 dated 16.3.2006 (wrongly typed as 16.3.2016) of the State Government and by following the parameters laid down in the Constitution Bench judgment of the Supreme Court rendered in the case of **Secretary, State of Karnataka Vs. Uma Devi & Ors.** since reported in **(2006) 4 SCC 1**. The order also directs for removal of such of the daily wage employees who do not fulfill the parameters laid down in the judgment. A copy of such direction is impugned at Annexure-11 to the writ petition.

The petitioners alongside have prayed for issuance of a writ in the nature of mandamus commanding the Selection Committee constituted as per the resolution No.639 dated 16.3.2006 under the Chairmanship of the Collector, Darbhanga respondent no.5, to



conclude the steps taken towards the absorption/regularization of the services of the daily wage employees following the recommendation of the Chief Engineer present in his Memo No.249 dated 30.1.2014, a copy of which is present at Annexure-7 to the writ petition.

While the writ petition is pending for consideration on the reliefs so prayed that the respondents acting on the advise tendered by the Engineer-in-Chief present at Annexure-11 and holding that the petitioners do not fulfill the parameters laid down in the judgment of **Uma Devi** (supra) have issued a termination order dated 31.3.2017 issued under the signature of the Executive Engineer which has been placed on record vide Annexure-14 to I.A. No. 4399 of 2017 and the petitioners seek leave of the court to question the order in the present proceeding itself which is accordingly allowed.

I.A.No.4399 of 2014 is allowed.

It is not in dispute that these petitioners have been working albeit on daily wage basis in the respondent Water Resources Department under the supervisory control of the respondent Nos. 6 to 8 since last about 25 years. The details are present at paragraph 18 of the writ petition and has not been disputed by the respondents in their counter affidavit. For the sake of convenience the details are reproduced hereinbelow:



I. Pandav Yadav:-

Pt.No.1	Pandav Yadav	Year of engagement	No.Days remained engaged
		1985	81 days
		1986	174 days
		1987	264
		1988	298 days
		1989	303 days
		1990	260 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



II. Hit Lal Yadav:-

Pt.No.2	Hit Lal Yadav	Year of engagement	No.Days remained engaged
		1985	141 days
		1986	285 days
		1987	207 days
		1988	301 days
		1989	333 days
		1990	312 days
		1991	321 days
		1992	318 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



III. Ram Kripal Yadav:-

Pt.No.3	Ram Kripal Yadav	Year of engagement	No.Days remained engaged
		1984	89 days
		1985	119 days
		1986	267 days
		1987	299
		1988	332 days
		1989	322 days
		1990	260 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



IV. Uchit Lal Yadav:-

Pt.No.4	Uchit Lal Yadav	Year of engagement	No.Days remained engaged
		1984	60
		1985	--
		1986	238+58
		1987	
		1988	206+62 days
		1989	302 days
		1990	221 days
		1991	312 days
		1992	309 days
		1993	305 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



V. Ram Chandra Mandal:-

Pt.No.5	Ram Chandra Mandal	Year of engagement	No.Days remained engaged
		1984	65 days
		1985	118 days
		1986	127 days
		1987	220
		1988	123 days
		1989	312 days
		1990	260 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



VI. Shatrughan Yadav:-

Pt.No.6	Shatrughan Yadav	Year of engagement	No.Days remained engaged
		1985	93 days
		1986	--
		1987	--
		1988	281days
		1989	329 days
		1990	325 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



VII. Lakshmi Paswan

Pt.No.7	Lakshmi Paswan	Year of engagement	No.Days remained engaged
		1984	87
		1985	152 days
		1986	241 days
		1987	290
		1988	277 days
		1989	52 days
		1990	240 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



VIII. Phuldeo Yadav:-

Pt.No.8	Phuldeo Yadav	Year of engagement	No.Days remained engaged
		1985	91 days
		1986	117 days
		1987	192
		1988	178 days
		1989	285 days
		1990	131 days
		1991	312 days
		1992	312 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



IX. Tani Lal Yadav:-

Pt.No.9	Tani Lal Yadav	Year of engagement	No.Days remained engaged
		1984	117 days
		1985	307 days
		1986	356 days
		1987	268
		1988	301 days
		1989	333 days
		1990	318 days
		1991	312 days
		1992	292 days
		1993	312 days
		1994	312 days
		1995	312 days
		1996	312 days
		1997	312 days
		1998	312 days
		1999	312 days
		2000	312 days
		2001	312 days
		2002	312 days
		2003	312 days
		2004	312 days
		2005	312 days
		2006	312 days
		2007	312 days
		2008	312 days
		2009	312 days
		2010	312 days
		2011	312 days
		2012	312 days
		2013	312 days



The details present would show that each of the petitioners have worked for more than 240 days in each year, for a period of over 20 years on daily wage basis.

While on the Scheme of regularization, a decision was initially taken by the State in its Resolution No.5940 dated 18.6.1993 to regularize/absorb all such daily wage employees who had been on the rolls of the State Government for a period of 10 years or more as on 1.8.1985. A decision was also taken to remove those who were engaged after 1.8.1985. The cut of date was protested by the Employees Union and an agreement was arrived at in between the State and the Employees Union to extend the cut of date to 11.12.1990 vide resolution No. 489 dated 10.5.2005 (Annexure-2).

It is following such policy decision that a resolution was adopted by the State in its Department of Personnel and Administrative Reforms bearing No.639 dated 16.3.2006 to regularize all such daily wage employees who were on the rolls of the State Government on 11.12.1990 and had completed 240 days of continuous service in a year as manifest from paragraph 2(1) of the resolution. The resolution at paragraph 3(1) takes care of those engaged after 11.12.1990 and in their cases the stipulation is of continuous service of 240 days in a year, in the past five years. A copy of the Resolution bearing No.639 dated 16.3.2006 is present at



Annexure-C to the counter affidavit filed on behalf of the State as well as Annexure 3 to the writ petition.

It is following such policy decision adopted by the State for regularization of the daily wage employees that a process started in the Water Resources Department for regularization of the services of all those who were on the Rolls of the Department as on 11.12.1990, which is manifest from the letter of the Chief Engineer addressed to the District Magistrate, Darbhanga dated 10.5.2007 as contained in Annexure 6 recommending the case of such of the daily wage employees who fulfilled the stipulation present in the resolution No. 639 dated 16.3.2006 and were entitled for regularization / absorption. It is not in dispute that the name of these petitioners does figure in this list attached to the letter.

Nothing progressed thereafter leading to the second request/ recommendation by the Chief Engineer to the District Magistrate, Darbhanga on 30.1.2014 vide Annexure-7 enclosing the list of the daily wage employees who fulfilled the stipulations present in the resolution No.639 dated 16.3.2006 as well as the stipulations laid down by the State Government from time to time as manifest from the letter itself. The list so enclosed by the Chief Engineer again includes these petitioners.

Although in view of the recommendations present at Annexure



6 and 7 of the Chief Engineer, it remained a mere completion of formality by the Committee headed by the District Magistrate, Darbhanga to attach finality to the exercise more particularly where repeatedly it was brought to his notice that these petitioners and others fulfilled the stipulations present in the resolution No.639 dated 16.3.2006 of the State Government but a laid back attitude by the Committee headed by the District Magistrate, Darbhanga delayed the process and in the meantime an advisory was issued by the Principal Secretary, Water Resources Department to the District Magistrates to bear in mind the parameters laid down by the Constitution Bench of the Supreme Court in the judgment rendered in the case of **Uma Devi** (supra), while considering the case of the regularization of the daily wage employees in the light of the policy decision present in the resolution No.639 dated 16.3.2006. A copy of such advisory is present at Annexure-9 and Annexure-10 is a letter of the Joint Secretary, Water Resources Department, addressed to the Chief Engineer on similar lines.

It is in the light of the advisories so issued, present at Annexures- 9 and 10 that the Engineer in Chief vide his letter No.505 dated 5.10.2016 addressed to the Chief Engineer advised him to regularize only such of the daily wage employees who fulfilled the parameters laid down in the judgment of **Uma Devi** (supra) and the



services of the rest be terminated. The advisory is impugned at Annexure-11 and it is at this stage that the petitioners came before this Court but even before the issue could be deliberated upon that on 31.3.2017 in a hurried manner, an order of termination has been passed against the petitioners issued under the signature of the Executive Engineer West Kosi Canal Division, Darbhanga impugned at Annexure 14 to I.A. No. 4399 of 2017. The order is non speaking and does not discuss the reasons for the termination and it is the specific plea of learned counsel for the petitioners and not contested, that they have not been noticed before such termination order was passed. Feeling aggrieved the petitioners are before Court.

It is the argument of Mr. Narayan learned counsel for the petitioners that the petitioners fulfil each stipulation present in the resolution No.639 dated 16.3.2006 of the State Government for their regularization and which is confirmed from the recommendations present at Annexures 6 and 7 of the Chief Engineer. It is submitted that the advisory issued by the department present at Annexures-9 and 10 requiring the Committee to consider the regularization issue in the background of the parameters laid down in the judgment of **Uma Devi** (supra) has been misunderstood to result in the orders impugned. It is further the argument of learned counsel for the petitioners that it is not on merits that the claim for regularization has been rejected rather it is



on the alleged failure of the petitioners to furnish certain information to the respondents, even when each such information was much available with the respondent themselves, that such extreme step has been taken where the very service of the petitioners has been terminated. Learned counsel has relied upon a judgment of the Supreme Court since reported in **2015 (2) PLJR SC 437 (Amarkant Rai Vs. State of Bihar & Ors.)** to canvass that the Supreme Court taking note of the legal position settled by the judgment rendered in the case of **State of Karnataka and Ors. Vs. M.L. Kesari & Ors.** since reported in **(2010) 9SCC 247** has held that a mere failure to call for names from the employment exchange even if an irregularity cannot be held an illegality for interfering with the initial appointment. Learned counsel in reference to paragraph 53 of the Constitution Bench judgment of the Supreme Court rendered in the case of **Uma Devi** (supra) submits that the judgment was an advise to such of the State Government(s) who had not framed any Scheme for regularization of its daily wagers and in which connection while advising the State(s) to frame a Scheme as a one time exercise within six months that the Constitution Bench has drawn the parameters to be followed. He submits that since the State of Bihar had already framed a Scheme in this connection much before the judgment, the issue of regularization would have to be tested as per the stipulations



so present in the Scheme.

Per contra, it is the argument of Mr. Tiwari learned State counsel in reference to the statement present in the counter affidavit that since certain information were called for from the petitioners which stands mentioned at paragraph 13 of the counter affidavit and which was in tune with the legal position settled in the judgment of **Uma Devi** (supra) and since the petitioner failed to respond to the queries that they have been excluded from the process of regularization and their services have been dispensed with.

Mr. Tiwari refers to the stipulations present at paragraph 3(iii) of the Circular of the State Government bearing No. 639 dated 16.3.2006 which inter alia constitutes a Committee at the Divisional level to submit, that the Committee was fully empowered to seek information from the daily wagers in tune with the parameters laid down in the case of **Uma Devi** (supra) and since the petitioners have failed to provide the same, they are not entitled for regularization of their services. Learned counsel in order to lend support to impugned action of the respondents has referred to the Full Bench judgment of this Court reported in **2013 (1) PLJR 964 (Ram Sevak Yadav Vs. State)** to submit that the queries made by the respondents were in tune with the settled legal position.

I have heard learned counsel for the parties and I have perused



the records.

The facts are not in dispute. It is also not in dispute that these petitioners are on the rolls of the Water Resources Department, Darbhanga since last more than 25 years. It is again not in dispute that they have rendered continuous service for a period of more than 240 days in each year in the last more than 2 decades which is supported from the details given hereinabove. It is in consideration of this continuous service as well as their eligibility to hold that post that their cases were recommended for regularization by the Chief Engineer vide Annexures-6 and 7 in specific reference to the Resolution No.639 dated 16.3.2006 of the State Government. While the recommendation at Annexure- 6 dates back to 10.5.2007 it took more than 7 years thereafter for the Chief Engineer to again make a recommendation in this regard which was done on 30.1.2014 vide Annexure-7. All this while the authorities in the Department have satisfied themselves on the issue that the daily wagers whose cases have been recommended fulfilled the stipulations present in the Resolution dated 639 dated 16.3.2006 of the State Government. It is around this time that the judgment of the Constitution Bench in the case of **Uma Devi** (supra) was delivered which laid down certain parameters to be followed by the State Governments in the process of framing of scheme for regularization of the services of the daily wage



employees. It is mechanically and without appreciating the ratio laid down in judgment and whether at all in view of the scheme already framed by the State of Bihar in its resolution No. 639 dated 16.3.2006, there was any occasion for the State to deviate from the Scheme to seek any such information which was never mandated in the scheme in question, that correspondences started, thus scuttling the regularization process. Copies of such uncalled for correspondence is enclosed at Annexure-9 and 10 to the writ petition.

In my opinion this exercise was wholly unwarranted since it was contrary to the stipulations present in the Scheme adopted by the State of Bihar for consideration of the cases of the daily wagers for regularization as contained in the resolution no. 639 dated 16.3.2006. The scheme itself contained stipulations which had to be attained by any daily wage employee claiming regularization and the essential requisite for such consideration is that the daily wager on the rolls of the State as on 11.12.1990, ought to have completed 240 days of continuous service in a year prior to 11.12.1990, as stipulated at paragraph 2(1) and for those appointed after 11.12.1990, the requirement was 240 days continuous service in past 5 years as per paragraph 3(i). The Scheme contains no other stipulation which a daily wager had to comply.

It is not in dispute that the service period required under the



Scheme dated 16.3.2006 for claiming regularization, was fulfilled by these petitioners. Despite such being the position that a new dimension has been introduced by the Department in reference to the judgment of the Supreme Court rendered in the case of **Uma Devi** (supra) and it is relying upon the opinion expressed by the Constitution Bench at paragraphs 43 and 53 of the judgment that five queries were made from the petitioners as mentioned in paragraph 13 of the counter affidavit. Since according to the respondents the petitioners failed to respond to these queries that their claim for regularization has been rejected and consequently their services terminated.

In my opinion neither the query so made by the respondents as reiterated in paragraph 13 of the counter affidavit is tenable in law nor the termination for the failure of the petitioner to supply the same is sustainable.

A plain reading of the Scheme of regularization present at Annexure-C would confirm that it does not bestow any right in the department concerned to seek any information as sought in paragraph 13 of the counter affidavit. The queries in fact are in violation to the Scheme itself. Even otherwise, in my opinion, the information which the State is trying to gather from the daily wagers are information which should be in the possession of the State itself. The respondents



have acted rather arbitrarily and malafidely to demand such documents which are more than two decades old from the daily wagers knowing fully well that these daily wagers would not be in a position to supply the same. The action taken is malafidely motivated to deny the justful claim of the petitioners flowing from the Scheme dated 16.3.2006 and to wrest away the legal right vested in these petitioners thereunder

Since the respondents have relied on the judgment of **Uma Devi** (supra) for seeking such queries, I deem it necessary to reproduce three paragraphs of the judgment i.e **paragraphs 7, 52 and 53** which would bear relevance to the issue discussed and also demonstrate the mechanical action of the respondents.

“7. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are



entitled to continue and should be directed to be absorbed.

.....
52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in **Rai Shivendra Bahadur (Dr.) v. The Governing Body of the Nalanda College**. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* (supra), *R.N. Nanjundappa* (supra), and *B.N. Nagarajan* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The



process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

(Emphasis supplied by me)

A cursory glance as to the issue raised and contested before the Supreme Court as discussed in paragraph 7 of the judgment would confirm that a claim based exclusively on continuity of service for seeking a regularization by the daily wagers, was put up for consideration before the Constitution Bench and it is testing such claim that directions were issued in paragraph 53 of the judgment. In other words, the Constitution Bench was not in consideration of any claim based on any Scheme of the State Government on regularization.

In my opinion the respondents in seeking information from the petitioners relying upon the directions issued by the Constitution Bench in the case of **Uma Devi** (supra), have failed to notice the observations of the Bench at paragraph 52 of the judgment which would squarely apply to the case in hand. The Constitution Bench while discussing the principle for issuance of a writ of mandamus, has held that unless a daily wager is able to establish any enforceable right to claim regularization under a statute with a corresponding duty cast on the State to grant regularization, no mandamus can be issued. The



Constitution Bench taking note of its earlier judgments has observed that since the petitioners of the said case had failed to demonstrate any such enforceable right for permanent absorption or a corresponding duty attached to the State Government for granting permanency, no mandamus could be issued.

The legal position settled by the Constitution Bench in paragraph 52 of the judgment is loud and clear and negates all objections so raised by the respondents to deny the relief to these petitioners despite the fact that they fulfilled the stipulations present under Scheme so framed by the State Government. The respondents have got thoroughly confused on the directions issued by the Constitution Bench in the case of **Uma Devi** (supra) and on a complete misreading of the judgment that they have initiated an exercise by calling for information which was wholly unwarranted in view of the stipulations present in the Scheme framed by the State Government for regularization of its daily wager present in the resolution no. 639 dated 16.3.2006.

While the Constitution Bench in the case of **Uma Devi** (supra) upholds the right of a daily wager for regularization where it is sought to be enforced under any scheme of the State Government as confirmed from paragraph 52 of the judgment, paragraph 53 of the judgment is a departure therefrom and allows 6 months time to such



of the State Government(s) who have not framed any scheme for regularization, to set the process in motion by formulating a scheme as a one time measure and while doing so follow the parameters so laid down in the judgment. The opinion expressed by the Constitution Bench at paragraph 53 of the judgment is in respect of such of the States where no such scheme of regularization was in force and the daily wagers were claiming regularization simply on the basis of continuity in service. It is in this background that the Union of India, the State Government and other instrumentalities were advised to take steps to frame a scheme for regularization as a one time measure.

The case of the State of Bihar is distinguishable since there was already a scheme of regularization in force in the State casting obligation on the appropriate competent authorities of the State Government, to regularize all such daily wagers who were on the rolls of the State Government as on 11.12.1990 and fulfilled the stipulations of completion of 240 days in a year. For those engaged after 11.12.1990, the requirement is continuous service of 240 days in each of the past five years. Reference in this regard is made to the legal position clarified in the judgment of the Division Bench reported in **2016(1)PLJR 232 (Ashok Kumar Vs. State)** and **2016(1)PLJR 512 (Jai Kishun Ram Vs. State)**.

The judgment of the Full Bench of this Court rendered in the



case of **Ram Sevak Yadav** (supra) so relied upon by learned State counsel to defend the impugned action, was on a reference made in a completely different context as is manifest from paragraph 1 of the judgment which runs as under:

“The seminal reference to be answered is, if (2010) 9 SCC 247 (**The State of Karnataka vs. M.L. Kesari**) makes a departure from the distinction between an illegal and irregular appointment as held in (2006) 4 SCC 1 [: 2006 (2) PLJR (SC) 363] (**State of Karnataka vs. Uma Devi**) for purposes of regularization. If it does, shall it constitute a precedent?”

The terms of reference thus which fell for consideration before the Full Bench basically centered around the opinion expressed by the Supreme Court in the case of **State of Karnataka Vs. M.L. Kesari** reported in (2010) 9 SCC 247 on the distinction between illegal appointment and irregular appointment and whether it was a departure from the view expressed by the Constitution Bench in the case of **Uma Devi** (supra), to constitute a precedent.

The issue put to contest before this Court in the present case, never fell for consideration before the Full Bench nor was debated upon. In fact the reference put up before the Full Bench did not even invite any opinion whether it is paragraph 52 of the Constitution Bench judgment in the case of **Uma Devi** (supra) which would cover the cases of the daily wagers of the State of Bihar in their quest for regularization or they also would be covered by paragraph 53 of the



judgment.

In my opinion, in the circumstances discussed, the reliance of learned State counsel on the Full Bench judgment of **Ram Sevak Yadav** (supra), is misplaced on the well known principles that a judgment is an authority for the proposition which it decides and not what can logically be deduced therefrom. Reference is made to the opinion expressed by the Supreme Court in a case reported in **(2006) 1 SCC 368 (Union of India Vs. Major Bahadur Singh)** in particular paragraph 9 thereof, which runs as follows:-

“9.....The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.....”

Reverting to the matter in issue, there is no dispute that the petitioners fulfill all stipulations so present in the scheme of the State Government dated 16.3.2006. The queries thus made by the respondent at paragraph 13 are in violation of the Scheme which obliges the Government Department to regularize its daily wage employees as per the stipulations present in the Scheme. It is



unfortunate that the legal position being so clear yet unwarranted queries which were foreign to the Scheme, were raised by the respondent to deny justful claims to the daily wagers who are covered under the scheme of 16.3.2006, having rendered continuous service of 240 days in each of the years in past 2 decades or more. The irony is that even when these petitioners are fully entitled for regularization, their services have been terminated without opportunity of hearing on their failure to respond to the unwarranted queries of the respondents. There cannot be a better case of injustice, there cannot be a worst case of harassment and there cannot be a more appropriate example of a human rights violation. On a complete misreading of the legal position settled by the Constitution Bench in the case of **Uma Devi** (supra) that the State in its Department of Water Resources has not only failed to discharge the obligation cast upon them under the scheme of 16.3.2006 rather in view of the position explained in paragraph 52 of the judgment, there is an abdication of responsibility by the respondents.

A somewhat similar situation where the petitioner was claiming regularization on the basis of a Scheme, fell for consideration before the Supreme Court in the case of **Secretary to Government Commercial Taxes and Registration Department, Secretariat Vs. A. Singamuthu** reported in **AIR 2017 SC 1304**. A similar resolution



issued by the Government of Tamil Nadu bearing G.O.No.22 dated 28.2.2006 in so far as it provided for regularization of daily wage employees who had rendered more than 10 years service as on 1.1.2006 was in consideration before the Supreme Court on the issue as to whether the resolution so adopted by the Government of Tamil Nadu would be applicable only to full time daily wage employees who had completed 10 years of continuous service or would also include part time daily wage employees. The Supreme Court taking note of its earlier judgment(s) including the Constitution Bench judgment in the case of **Uma Devi** (supra) as well as the legal proposition settled in the case of **State of Rajasthan and Ors. Vs. Daya Lal & Ors.** reported in (2011)2 SCC 429 considered the claim of the daily wager employed on part time basis who was seeking parity with the benefit of regularization extended to the daily wager employed on full time basis, under the Government resolution dated 28.2.2006. The prayer of the petitioner was allowed by the learned Single Judge of the High Court of Madras and the judgment was affirmed by the Division Bench when the State's appeal was dismissed. The Supreme Court while examining the Scheme framed vide resolution dated 28.2.2006 of the State Government of Tamil Nadu held that while the said resolution extended regularization only to a daily wager employed on full time basis and even though the part



time daily wager was extended similar benefit vide resolution dated 14.10.2009 and 26.3.2010 with effect from the date of issuance of the Government orders but the learned the Single Judge had incorrectly granted relief to the part time daily wager on completion of 10 years of service as per the resolution dated 28.2.2006 and also granted him monetary benefits on completion of 10 years. It was held that the respondent –writ petitioner would be entitled to monetary benefits from the date of issuance of Government order regularizing his service, which was passed on 18.6.2012.

The opinion expressed by this Court on the contest herein, finds support from the judgment of the Supreme Court rendered in the case of **A. Singamuthu** (supra) where a similar claim for regularization by a daily wage employee was tested on the basis of the scheme formulated by the State Government of Tamil Nadu and whether the daily wage employee fulfilled the stipulations present therein.

Just as the petitioner in the case of **A. Singamuthu** (supra), was seeking regularization on the strength of the Scheme framed by the Government of Tamil Nadu which merely required that a daily wager should have completed 10 years of service for regularization and the Supreme Court while noticing the Constitution Bench judgment in the case of **Uma Devi** (supra), found no infirmity in the stipulations so present in the scheme, the case of the petitioners herein



stands on identical footing.

For the reasons discussed, the termination order passed by the Executive Engineer dated 31.3.2017 impugned at Annexure-14 is quashed and set aside. The advisory issued by the Chief Engineer in his memo No.505 dated 5.10.2016 is held unwarranted foreign and contrary to the stipulations present in the Resolution No.639 dated 16.3.2006 of the State Government present at Annexure-C which is a complete scheme by itself and also pin points the stipulations relevant for consideration of a case for regularization.

In consequence, the Committee constituted under the Chairmanship of Collector, Darbhanga is directed to consider the case of these petitioners for regularization in the light of the observations made hereinabove and pass appropriate order within a period of 3 months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.09.2017
Transmission Date	NA

