

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1295 of 2016

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Jay Prakash Tiwari Son of Sri Ram Pratap Tiwari, Resident of Village - Kanti, P.S.
- Lalganj, District - Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Personnel and Administrative Department, Bihar Government, Patna.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. The Engineer- in - Chief, Rural Work Department, Bihar, Patna.
4. The Superintending Engineer, Work Department, Work Circle, Muzaffarpur.
5. The District Magistrate, Vaishali at Hajipur.
6. The Executive Engineer, Rural Work Department, Works Division, Hajipur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Adv.

For the Respondent/s : Mr. Anirban Kundu, SC-24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-07-2017

Heard Mr. Pramod Kumar, learned counsel appearing for
the petitioner and Mr. Anirban Kundu, learned SC-24, for the State.

The petitioner while questioning the order dated 20.11.2015
bearing Memo No. 1730 of the Superintending Engineer, Rural Works
Department, Work Circle, Muzaffarpur, whereby his claim for
regularization has been rejected, seeks a direction in this regard in the
light of Circular No. 639 dated 16.3.2006, inter alia, on grounds that
he has rendered five years continuous service for at least 240 days
every year as prescribed under the circular for seeking such
regularization.

The claim of the petitioner is based on his rendering service



in between the period 6.8.1987 to 20.10.1993, the details of which is mentioned in the impugned order itself at Annexure 9, and in reference where to it is the contention of Mr. Pramod Kumar, learned counsel appearing for the petitioner, that the petitioner had a right for consideration since according to the circular itself all daily wagers, who had completed 240 days in five years, were entitled for regularization of service and absorption.

It is not in dispute that since after 20th October, 1993 the petitioner is out of service. Mr. Pramod Kumar, learned counsel for the petitioner, has invited the attention of this Court to the earlier round of proceeding arising from C.W.J.C.No. 23661/2012 at Annexure 7 to submit that this Court taking note of the circumstances existing had referred the matter for consideration by the competent authority. According to Mr. Kumar, having rendered five years service as required under the circular dated 16.3.2006, the petitioner had a right vested for regularization.

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

As I have already observed that this petitioner is out of service since 20th October, 1993 as taken note of in the impugned order and there is nothing on record of the proceeding to contest this position. In other words, the policy decision under which the



petitioner exercises his right i.e. Resolution No. 639 dated 16.3.2006 came into force much later than the relieving of the petitioner who was not in service of the State Government on the date when the policy was enforced.

In my opinion, one of the essential prerequisites for seeking regularization of service by way of absorption is that the daily wager should be on the roll of the State in whatever capacity, when he seeks a consideration under the policy decision which in the present case would be the resolution dated 16.3.2006. I draw my strength from the observation of the Supreme Court made in paragraph 28 of the judgment reported in 2015(2) PLJR (SC)6 (**Oshiar Prasad & ors. v. the Employees in relation to Management of Sudamdih Coal Washery of M/s BCCL, Dhanbad**), wherein their Lordships have held that the master servant relationship should exist on the date when the cause of action has arisen for any daily wager seeking a regularization. The facts are not in dispute and it is uncontested that the petitioner neither bothered to question his relieving before the appropriate forum nor did he raise any grievance under the policy decision dated 16.3.2006, rather waited for six long years to come before this Court in C.W.J.C.No. 23661/2012.

Apart from the fact that a master servant relationship has to be demonstrated as existing on the date when an enforceable right



under a policy decision is exercised by a daily wager, which is completely missing in the present case, even on grounds of gross laches and delay on the part of the petitioner to raise his claim, this Court is not persuaded to grant indulgence to the relief prayed or to interfere with the order impugned.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2017
Transmission Date	NA

