

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4121 of 2014

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1. Krishna Sah Son Of Late Lakhan Sah Resident Of Near Sadar Hospital, P.S. - Kotwali, District - Munger

2. Salaza Devi Wife Of Late Kailash Prasad Yadav Resident Of Mohalla - Lal Darwaza, Near Gumti No - 1, P.O. - Lal Darwaza, P.S. - Kotwali, District - Munger

3. Kampani Singh Son Of Late Chote Lal Singh Resident Of Village - Mamai, P.O. - Mamai, P.S. - Asarganj, District - Munger

4. Sanjay Kumar Singh Son Of Sri Pradeep Singh Resident Of Mohalla - Malaipur, P.O. - Saligrampur, P.S. - Sahebpur Kalam, District - Begusarai

5. Mithilesh Kumar Singh Son Of Sri Pradeep Singh Resident Of Mohalla - Malaipur, P.O. - Saligrampur, P.S. - Sahebpur Kalam, District - Begusarai

6. Shashi Bhushan Prasad Son Of Late Pradeep Singh Resident Of Mohalla - Topkhana Bazar, P.O. - Munger, P.S. - Muffasil, District - Munger

7. Shailendra Kumar Singh Son Of Late Mahendra Narayan Singh Resident Of Mohalla - Basudeopur, P.O. - Basudeopur, P.S. - Basudeopur, District - Munger

8. Kinodi Yadav Son Of Late Singeshwar Yadav Resident Of Mohalla - Sankarpur, P.O. - Sankarpur, P.S. - Muffasil, District - Munger Petitioners

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna

2. The Principle Secretary , Public Health Engineering Department, Government Of Bihar, Patna

3. The Engineer In Chief , Public Health Engineering Department, Government Of Bihar, Patna

4. The Superintending Engineer, P.H.E.D. Bhagalpur

5. The Executive Engineer, P.H.E.D., Munger Respondents

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Appearance :

For the Petitioners : Mr. Rakesh Kumar Sinha, Adv.

For the Respondents : Mr. Dhurjati Kr Prasad, GP, XIV

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 11-09-2017

Prabhat Kumar Jha, J.

Heard both sides.

2. The petitioners seek quashing of the order, dated 31.12.2013, as contained in Memo No. 1572, by which the services of the petitioners, along with other persons, have been terminated on the ground that the purpose for which they were appointed is over and there is no requirement of their services on daily wages, therefore, their services have been terminated with effect from 31.01.2014.

3. The learned counsel for the petitioners submits that



by the impugned order the services of nine persons have been terminated. One of them, Manoj Kumar Paswan, filed C.W.J.C. No. 4848 of 2014 and this Court vide order, dated 01.04.2015 disposed off the writ petition of Manoj Kumar Paswan on the ground that if vacancy is available the case of Manoj Kumar Paswan shall be considered. The authorities shall inform Manoj Kumar Paswan about the availability of the case within three months from the date of filing of an application along with a copy of this order passed in C.W.J.C. No. 4848 of 2014. When the case of Manoj Kumar Paswan was not considered, although there was vacancy, Manoj Kumar Paswan filed contempt petition and during the course of hearing it transpired that there is vacancy and Manoj Kumar Paswan was regularized in service. The learned counsel for the petitioners, further, submits that the petitioners were appointed on daily wages from 19.11.1991 and onwards on different dates, in accordance with the procedure after advertisement in the daily newspaper. There are fourteen posts lying vacant, but, petitioners were terminated on the ground that there is no vacancy.

4. On the other hand, the learned counsel for the State filed counter affidavit and submitted that the petitioners and other persons who were appointed as daily wagger, after cut-off date, dated 11.12.1990, have not been considered entitled to be regularized in view of Resolution No. 639, dated 16.03.2006, of the Government of Bihar. The learned counsel for the petitioners, further, submits that the daily wages worker are not entitled to be regularized and they have no right for their regularization as their appointments are not in accordance with law and they did not work on the sanctioned or vacant post. The learned counsel, further, placed his reliance of the Division Bench judgment of this Court **reported in 2016(4) P.L.J.R., 596 (the State of Bihar & Ors. Vrs. Ram Badan Singh Ors.)** and in paragraph 10 it has been held as follows :



“10 : Having considered the rival contentions, we find merit in the submission 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 vs 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 [:2006(2) PLJR (SC) 363], 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 Parakash vs. State of Bihar** reported as (2010)4 SCC 179 [:2010(2) PLJR (SC) 33], that daily wagers are not



entitled for consideration under paragraph 53 of the judgment in Uma Devi (supra).

5. The respondents have filed counter affidavit and stated that 28 posts are sanctioned out of which 14 posts are lying vacant.

6. Having considered the submissions and on perusal of the records, it appears that the petitioners have stated that they were appointed on daily wages on different dates, admittedly, after 11.12.1990, but, they were appointed through advertisement on the basis of requirement of the Department. The petitioners have, further, stated that there are 227 posts of different categories on which the daily wages workers are working in the Public Health and Engineering Department of Rural Division. Out of the aforesaid list many of them have been regularized in accordance with the circulars, as contained in Memo no. 1031, dated 05.03.1990. It appears that the petitioners have been duly appointed after advertisement and they have been working on the sanctioned post.

7. From the perusal of Annexure 4, it appears that the respondents terminated the services of the petitioners on the ground that no post is lying vacant, but, when Manoj Kumar Paswan filed writ petition and the contempt petition the Executive Engineer of Public Health and Engineering Department, Munger Division, made specific averment in Annexure "K" of M.J.C. that the sanctioned post is still lying vacant and on the basis of such averment Manoj Kumar Paswan had already been regularized in service. Respondents have also stated that there 14 posts are lying vacant and the case of the petitioners stand exactly on the same footing as that of Manoj Kumar Paswan, therefore, I do not find any force in the submission of the learned counsel for the respondents that the petitioners were appointed without following the



procedure of appointment of daily wager and no post is lying vacant.

8. In view of the facts and discussions, made above, I find that the order, as contained in Annexure 4, is bad and, accordingly, the same is **set aside**. The respondents are directed to consider the case of the petitioners for their regularization as the case of the petitioners stands on the same footing as that of Manoj Kumar Paswan, who has already been appointed, within three months from the date of receipt/production of this order.

9. Accordingly, this application is **allowed**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

