

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23479 of 2012

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1. Ramdhyan Kushwaha S/O Late Banshi Kushwaha At Present Resident of Village - Pipra Daula Kadam, P.S. Ata, Distt. Dewaria
 2. Vidyanand Pandey S/O Late Ramashish Pandey Resident of Village - Barbat Prasarain Betia, P.S. Muffasil Betia, District - West Champaran
 3. Nawal Kishore Dubey S/O Sri Ram Shakal Dubey Resident of Village - Singachhapar Lalgah, P.S. Mufassil Betia, District - West Champaran
 4. Madan Das S/O Late Gunraj Das R/O Village - Bakharia, P.S. Majhauria, District - West Champaran

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, General Administration Department, Old Secretariat, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Old Secretariat, Government of Bihar, Patna
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, District - West Champaran
5. The District Establishment, Deputy Collector, West Champaran, Bettiah
6. The Sub-Divisional Officer, Sadar, Bettiah, P.S. Bettiah, District - West Champaran

.... Respondents

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Appearance:

For the Petitioners : Mr. Manoj Kumar, Mr. Avinash Kumar
Mr. Chandan Kumar, Mr. Prabhakar Sahai
Ms. Meenakshi Singh and
Mr. Jai Prakash Singh, Advocates
For the Respondent : Mr. Kameshwar Kumar, GP 17
Mr. Amit Bhushan, AC to GP 17

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-08-2017

I.A. No. 3165 of 2014

This interlocutory application has been filed for
amendment of the prayer portion of the writ petition by adding
the following prayers —

*“Further a writ in the nature of mandamus may
issue commanding and directing to the respondent
authorities to grant the age relaxation to the
petitioners as per provision Rule 54 of the Bihar*



Service Code with regard to appointment of the petitioners in subsequent vacancy in the Collectorate, Bettiah. District West Champaran and consider absorption of their services in the light of the circular of the Personnel and Administrative Department as contained in Memo No. 639 dated 16.03.2006 as one time opportunity.”

2. Having regard to the nature of the prayer, the same is allowed and learned counsel for the petitioner is permitted to make amendment in the prayer portion of the writ petition in course of the day.

C.W.J.C. No. 23479 of 2012

3. The present writ petition has been filed (i) for quashing the order as contained in Memo No. 70/Nazarat dated 03.04.2012 passed by the Collector, West Champaran whereby and whereunder the claim of the petitioners for regularization of their services has been rejected due to non-completion of 240 days in every year prior to 11.12.1990 in regular five years; (ii) for a direction to the respondent authorities to regularize the services of the petitioner no. 1 and 2 to the post of Driver and petitioner no. 3 and 4 on Class IV posts in view of long number of years of services to their respective posts and also in view of the fact that persons similarly situated to the petitioners namely, Drup



Raut, Ambika Yadav and Munna Rao have been appointed afresh but the case of the petitioners have been illegally rejected by the Collector, West Champaran; and (iii) for consequential reliefs.

4. The short facts of the case according to the petitioners are that they joined on 01.07.1988, 05.07.1989, 01.04.1986 and 14.04.1986 respectively as daily wage workers as Drivers/Class IV posts under the Sub-divisional Officer, Sadar, Bettiah, District West Champaran and worked there for over 10 years continuously to the satisfaction of the authorities. They approached this Court in CWJC No. 7321 of 1996 for a direction for regularization. Pursuant to the directions in the said writ petition they filed a representation before the District Magistrate, Bettiah. Such representation was disposed of with observations regarding equal payment for equal work, but without granting the relief of absorption/ regularization, leading the petitioners once again to approach this Court in CWJC No. 2440 of 1998 which was disposed of relegating the petitioners to file a representation to find out reason of their non-appointment/ regularization, before the Court would consider the matter afresh. Pursuant to the order passed in CWJC No. 2440 of 1998, the impugned order dated 03.04.2012 has been passed. During pendency of the said writ petition, some



similarly situated persons namely, Madhan Choudhary and Ashok Raut have been regularly appointed on Class IV post of Anusevak in terms of an order dated 06.12.2008 passed by the Collector, West Champaran, Bettiah.

5. Learned counsel for the petitioners makes a short submission to assail the impugned order. It is submitted that reliance placed by the respondents on memo no. 639 dated 16.03.2006 relating to the requisite period of working for the purpose of eligibility for regularization is based on a misreading of the circular. The claim of the petitioners has erroneously been denied on the ground that they did not fulfill the pre-conditions with reference to the period of working namely, five years prior to 11.12.1990 and a minimum of 240 days in each year, as contemplated in the circular dated 16.03.2006 aforesaid.

6. Learned counsel for the petitioners relies on a judgment of the Division Bench of this Court in the case of *Ashok Kumar Sharma and others vs. The State of Bihar through the Chief Secretary and others*, 2016 (1) PLJR 232 wherein it has been observed as follows :

“6. ... It is then pointed out and rightly so, in our view, the other category of daily wagers, who were to be considered for regularization, were those who were appointed after 11.12.1990 may be up to 2006. It is in respect of these that new stipulation in the resolution of 2006 was laid down that they would be required to complete 240 days per year for five (5) continuous years for their regularization. It is submitted by the appellants



that they are in the first category and not in the second category. Considering that they, as the first category, had been regularized by the conscious decision of the State Government, without noticing or realizing the difference, the regularization order has been withdrawn putting them in the second category. It is submitted that the learned Single Judge did not appreciate those distinctions and this categorization. It is also pointed out that this dichotomy of two categorizations was noticed by the department and a clarification was sought for from the Personnel Department. The clarification was that all employees employed on daily wages would have to satisfy the condition of having worked for 240 days per year for five (5) continuous years. What was the reason for this singular condition was not explained.

7. Having considered the matter, in our view, learned counsel for the appellants is correct. Considering the history of events up to 1990, as noted above, what was considered for regularization was a daily wager having worked for more than 240 days simpliciter, was the earlier State Government decision and which had been extended pursuant to trade union agreement. This was also in consonance with the resolution of the State Government in the Personnel Department dated 10.5.2005, which is a part of the proceedings itself. This clearly shows that right till the year 2005, State was only contemplating regularization with restriction that the said daily wager must have worked for 240 days. There was a clear distinction maintained when the 2006 resolution was taken. There were two classes First, where the State Government was bound by the trade union agreement in respect of daily wagers up to 11.12.1990 and second those who came thereafter. Therefore, there were two different categorizations in this resolution dated 16.03.2006. It is wrong to say that there was conflict between the Clause-1 of the said resolution and Clause-3. The two contemplated two different periods. The writ petitioners/appellants, falling within the first period i.e. till 11.12.1990, were rightly treated and regularized as per Annexure-6 to the writ petition with effect from 22.12.2006. This distinction was not brought out clearly before the learned Single Judge because of which the learned Single Judge applied Clause-3 of this resolution, which applied to only those people who had joined as daily wagers after 11.12.1990."



7. Similar view has been expressed also in the case of *Jai Kishun Ram and others vs. The State of Bihar and others*, 2016(1) PLJR 512.

8. Learned counsel for the petitioners accordingly submits that the present petitioners fall within the first category as explained in the aforesaid decisions and were eligible for their regularization, having worked continuously for more than 240 days upto 1990. This fact is not in dispute and stands admitted in Annexure-B to the counter affidavit filed on behalf of the respondent no. 4 to 6. So also it is evident from letter No. 530 dated 08.07.2014 (Annexure F/1 to the supplementary counter affidavit filed on behalf of the respondent no. 4) that these petitioners had worked for more than 240 days prior to 11.12.1990.

9. Learned counsel for the State on the other hand refers to the resolution dated 16.03.2006 (Annexure-A to the counter affidavit) to submit that the petitioners have rightly been kept out of the zone of consideration for their regularization in terms of the impugned order, having not fulfilled the twin conditions relating to the period worked.

10. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the writ petition. The resolution dated 16.03.2006 relied upon by learned counsel for the State has been duly



considered, interpreted and explained by this Court in Ashok Kumar Sharma's case (supra). Learned counsel for the State has also not disputed that the petitioners' case falls within the first category as explained by the Division Bench in the said case and have completed the requisite period of work as mentioned in Annexure-B and F/1 aforesaid.

11. In the above view of the matter, it must be held that the cases of the petitioners are squarely covered by the decision of the Division Bench of this Court in Ashok Kumar Sharma's case (supra) referred to above. All four petitioners had worked for 240 days prior to 11.12.1990 and fell in the first category as explained in the said decision. The writ petition accordingly stands allowed, with a direction to the District Magistrate, West Champaran to consider the case of the petitioners in the light of the Division Bench judgment referred to above and having regard to Annexure B and Annexure F/1 to the counter affidavit and supplementary counter affidavit respectively, filed in the present case. While disposing of the matter, the District Magistrate shall also have regard to the provisions of Rule 54 of the Bihar Service Code in the matter of grant of age relaxation to the petitioners and pass orders in accordance with law, expeditiously and in any event within a period of four months from the date of receipt/production of a copy of



this judgment.

Chandran/BT

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	11.08.2017
Transmission Date	N.A.

