

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12123 of 2016

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1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi
 2. The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi
 3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Government of India, New Delhi
 4. The Director General of Income Tax (HRD), 2nd Floor, ICADR Building, Plot No. 6, Vasant Kunj, Institutional Area, Phase - II, New Delhi 110072
 5. The Commission of Income Tax (Vig.), Central Board of Direct Taxes, Ministry of Finance, Government of India, North Block, New Delhi
 6. The Chief Commissioner of Income Tax (CCA), Central Revenue Building, Patna 800001

.... Petitioners

Versus

1. Raman Kumar Son of Sri Nand Kishore Singh, Working as Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
2. Sushil Kumar Pandey Son of Sri Parsuram Pandey, Working as Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
3. Krishna Rai Son of Sri Indra Deo Rai, Working as Gestetnor Operator, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
4. Subash Chandra Jha Son of Late Shiv Shankar Jha, Working as Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
5. Harendra Kumar Son of Sri Ram Brichha Mahto, Working as Telephone Operator, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
6. Pramod Kumar Sah Son of Sri Suresh Sah, Working as office Work, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
7. Nawal Kishore Dubey Son of Late Yadu Nandan Dubey, Working as Telephone Operator, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
8. Birendra Kumar Madhukar Son of Sri Ram Dayal Mahto, Working as Farash, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
9. Ram Prakash Rai Son of Late Jamadar Rai, Working as Farash, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
10. Binay Kumar Rai Son of Sri Ram Nath Prasad Rai, Working as Farash, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
11. Ram Pravesh Mahto Son of Late Iner Mahto, Working as Nigh Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
12. Mahendra Prasad Son of Late Nagina Prasad, Working as Farash, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
13. Ranjit Kumar Pandit Son of Sri Mahendra Pandit, Working as Guest Attendant/Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
14. Nand Kumar Pathak Son of Late Deo Pujan Pathak, Working as Driver, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
15. Prabha Kumari Daughter of Brij Nandan Sharma, Working as Computer Operator, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
16. Dharmendra Kumar Son of Sri Jay Kant Bind, Working as Safaiwala, office of



- the Chief Commissioner of Income Tax - 1, Patna (Bihar)
17. Vijay Kumar No. 1 Son of Late Dineshwar Prasad, Working as Mali, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
 18. Suresh Kumar Singh Son of Late Ram Govind Singh, Working as Guard, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
 19. Shyama Prasad Dey Son of Late Jitendra Mohan Dey, Working as Farash, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
 20. Md. Inam Son of Late Ansar Ahmad, Working as Safaiwala, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)
 21. Ajit Nath Kanth Son of Late Raj Narayan Kanth, Working as Computer Operator, office of the Chief Commissioner of Income Tax - 1, Patna (Bihar)

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12536 of 2016

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1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.
3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Government of India, New Delhi.
4. The Director General of Income Taxes (HRD), 2nd Floor, ICADR Building, Plot No. 6, Vasant Kunj, Institutional Area Phase-II, New Delhi- 110070.
5. The Chief Commissioner of Income Tax (CCA), Central Revenue Building, Patna-800001 (Bihar).

.... Petitioner/s

Versus

Arun Kumar 'Manoj', Son of Sri Rajeshwar Thakur, resident of Shanti Niketan Colony, Pharmacy College Road, Rupaspur, District- Patna working as Computer Operator, Office of the Commissioner of Income Tax, Patna (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, ASG
For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate
Mr. Krishna Mohan Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-02-2017

Both the writ applications are heard together because



they arise out of common order dated 30.05.2014, passed in different OAs., but *prima facie* relating to the issue of regularization of the daily wagers, who have been working in the Income Tax Department at Patna or Jharkhand for more than ten years. The Department of Income Tax after the Constitution Bench decision rendered in the case of *State of Karnataka Vs. Uma Devi* set up a Committee to regularise the services of such eligible candidates as a one time measure. The Committee recommended cases of 65 casual labourers or daily-rated majdoors but only 35 of them, supposedly senior in rank, came to be regularised vide office order No. 62 of 2010-11 dated 20th August, 2010 against vacancies of the year 2009-10. Those, who got left out or even otherwise who were claiming benefit of regularization, approached the Tribunal and after due deliberation the Tribunal passed the following direction :

“30. As to the cases of the applicants in these OAs, it is noted that prayer for regularization has been made only in OA No. 353/2013, 522/2013 and 804/2013. All the applicants in those three OAs claim to have completed ten years of service as on the date of judgment in the case of Uma Devi [supra] and their names were in the list of 65 persons recommended by the Committee. However, only the name of applicants in OA No. 804/2013, was in the list of 35 who were to be appointed but no appointment has been given to him due to a



pending criminal case. In case of others, the appointments were not given as in the meantime and Group 'D' posts were converted to MTS posts for which selection is done through SSC. We also note that the committee in its report has clearly mentioned that the candidates were not appointed through Employment Exchange. There is no mention whether they were appointed through an open and competitive selection process. The committee has also stated that no correlation of their engagement with posts could be established. As such in the light of decision of Full Bench of Patna High Court and of the Tribunal in Md. Hanif's case, no direction for regularization can be given unless it is established that the engagement was done through an open and competitive selection process and against posts. As to the plea of respondents that re-engaging persons could not be considered as vacancies were converted to MTS, we would like to observe that the exercise in terms of para 53 of Uma Devi's case was to be done within six months from the date of the order. This was delayed by the respondents. Even at the time of screening, old rules were applicable. It is also not the case of respondents that no vacancies prior to the year against which 35 persons were engaged were available. Thus, in our view the cases of regularization of persons should be reconsidered by the respondents after re-verifying the facts as to



whether they met criteria for absorption as explained in the judgments/ order cited above and if yes, then they may be considered as per 2009 rules as recommended by Committed and for posts, direction may be obtained that some Group 'D' posts as per vacancies available in previous year may not be converted into MTS, or in alternative, they may be considered even against MTS posts.

31. As to the applicants in other OAs, it is noted that applicants in OA No. 568 of 2013 were engaged on compassionate ground. In the scheme of appointment on compassionate ground, there is no provision for granting appointment as casual labourers. As such their engagement was in any case not as per rules/scheme and it was clearly illegal as per interpretation of judgments cited above. In other OAs, only three applicants in OA No. 552 of 2013 seem to have completed ten years of service but as there is no prayer, no direction for regularization can be issued.

32. In the light of foregoing discussion, these OAs are disposed of as follows :-

[i] The prayer of applicants for quashing and setting aside order dated 09/13.05.2013 as also the order dated 07.08.2013 is allowed to the extent that direction to stop payment to directly engaged casual labourers stands quashed.

[ii] The prayer to grant revision of daily wages in accordance with revised pay structure after 6th CPC



shall be considered by the respondents in terms of recommendation made by the Regional Office and if there is no other impediment, the same may be allowed as was done after implementation of 5th CPC scales.

[iii] This order shall not be interpreted as if we have restrained the respondents from implementing the policy or revised RRs of 2010. The respondents shall be at liberty to take action as per law/rules provided the same is in consonance with the judgment in the case of Uma Devi [supra] as interpreted by Full Bench of Hon'ble Patna High Court in the case of Ram Sevak Yadav [Supra] and the judgment of the Tribunal in the case of Md. Hanif & Ors. [Supra].

[iv] The prayer for regularization in OA No. 353 of 2013, 522 of 2013 and 804 of 2013 shall be considered in the light of observations made in para 30 above."

The Income Tax Department has now filed the writ application aggrieved by the direction issued by the Tribunal.

The submission of the learned Assistant Solicitor General representing the Union of India is that after the new scheme or recruitment rule came into place in the year 2010 where the posts were converted under what is known as MTS (Multiple Tasking Staff) Scheme, any vacancy subsisting after coming of the said rule could not be filled up by any of these claimants, and, therefore, the Tribunal



committed an error by giving a direction for reconsideration of the matter.

Mr. Y.V. Giri representing the applicants of O.A. No. 522 of 2013 has submitted that even amongst the 35 persons, who came to be appointed or regularised, pick and choose was adopted. People below in the list of recommended 65 candidates also came to be appointed. Not only this, they have appointed 21 further people on 4th of January, 2013 by using the so called post of MTS and regularised the Group-D post holders.

All these facts have not seriously been disputed by the petitioners before the Court in their reply to the counter affidavit of the private respondents and because of such pick and choose, which has been adopted and the jugglery which has been done by the authorities of the Income Tax Department, the Tribunal gave a direction in paragraphs 30 and 32 of its order, which is under challenge.

The Court is satisfied after hearing the parties and perusing the material that the decision has not been taken in a fair and square manner and there are certain omissions in the decision making which has caused heart burning amongst the claimants or even amongst the candidates who were short-listed in the list of 65. The Court is not inclined to interfere with the order of the Tribunal because the direction is to reconsider the matter, therefore, the ball is



in their court but the only difference is that now the game has to be played by the Income Tax Department according to the parameters which have been laid down by the Tribunal in its order, as well as the observation made therein with regard to the vacancy and the entitlement for re-consideration of eligible candidates.

The writ application, therefore, is dismissed. Let the authorities do the needful in terms of the direction issued by the Tribunal within a time frame.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2017
Transmission Date	NA

