

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19298 of 2016

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Nand Lal Singh, S/o late Kodi Prasad Singh, R/o Muhalla Kedar Bhawan,
Amarnath Road, Adalatganj, P.S.- Kotwali in the district of Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Home (Jail) Department,
Govt. of Bihar, Patna.
2. The Secretary, Home (Jail) Govt. of Bihar, Patna.
3. The Inspector General, Prison and Correctional Services, Govt. of Bihar, Patna.
4. The Superintendent of Adarsh Central Jail Beur Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 19309 of 2016

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Ras Bihari Thakur, S/o late Bhausagar Thakur, R/o Vill. Tarengana Mushahri, P.S.-
Masharhi in the district of Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Home (Jail) Department,
Govt. of Bihar, Patna.
2. The Secretary, Home (Jail) Govt. of Bihar, Patna.
3. The Inspector General, Prison and Correctional Services, Govt. of Bihar, Patna.
4. The Superintendent of Divisional Sub Jail Mashaurhi, Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 1416 of 2017

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Krishna Thakur, S/o Late Prasadi Thakur, Resident of village - Baikathpur, P.S.
Khushrupur, in the town and District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Home (Jail) Department,
Govt. of Bihar
2. The Secretary, Home (Jail) Govt. of Bihar, Patna
3. The Inspector General, Prison, and Correctional Services, Govt. of Bihar, Patna
4. The Superintendent of Central Jail, Purina.
5. The Superintendent, District Jail, Katihar.

.... Respondent/s

Appearance :

(In CWJC No.19298 of 2016)

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

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

(In CWJC No.19309 of 2016)

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



For the Respondent/s : Mr. Md. N.H. Khan, SC-1
Mr. Md. Naushaduzzoha, AC to SC-1
(In CWJC No.1416 of 2017)
For the Petitioner/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Md. N.H. Khan, SC-1
Mr. Md. Naushaduzzoha, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 08-05-2017

Heard Mr. Sanjeev Kumar, learned counsel appearing for the petitioners in this batch of cases and learned counsel appearing for the State in each of the cases.

The petitioners herein initially filed these writ petitions praying, inter alia, for a direction to the respondents to regularize their services with effect from the date of their initial appointment. Alternatively a prayer was made to consider the cases of the petitioners for appointment in terms of the advertisement as contained in Annexure-5 to CWJC No.19298 of 2016.

The claim of the petitioners for appointment in response to the advertisement present at Annexure-5 has been rejected on grounds that they were underage at the time of their initial engagement.

Since the issues raised and the contest in these writ petitions are same hence with the consent of the parties these writ petitions have been heard analogous and are being disposed of by this common judgment.

For the sake of convenience I shall be referring to the



pleadings and Annexures made in CWJC No.19298 of 2016 unless clarified with specific reference to any other writ petitions.

The facts are not in dispute. These petitioners were initially engaged as a contingent menials as a daily wager in different jail for contingent work as Nai, Safai Karmchari etc. While the petitioner in CWJC No.19298 of 2016 was appointed as a contingent menial on 5.7.1995 in Adarsh Central Jail, Beur in the town and district of Patna, the petitioner Rash Bihari Thakur was appointed as a barber on 25.3.1998 in Sub-Jail, Masaurhi and the petitioner Krishna Thakur was similarly appointed as a contingent menial to discharge the duty as a barber on 1.12.1982 in District Jail, Katihar.

A writ petition was filed by the Bihar Rajya Jail Chaturth Vargiya Kamgar Union giving rise to CWJC No.7655 of 1996, inter alia, for a direction to the respondents for payment of salary in regular scale. Vide judgment and order passed by a Bench of this Court on 14.9.1999 the respondents were directed to pay the wages to the petitioners/contingent menials in terms of the decision passed in CWJC No.3909 of 1995 (Bihar Rajya Jail Chaturth Vargiya and others vs. State of Bihar). A copy of the judgment is placed at Annexure-3 to the writ petition. While it is not in dispute that all these petitioners right since the date of their engagement



have been discharging their duties without any break and to the satisfaction of the authorities, in due course the statutory service rules, namely, Bihar Jail Nai and Safai Mazdoor Cadre Rules, 2011 (hereinafter referred to as 'the Rules') have been framed, inter alia, for providing procedure of recruitment and other service conditions, a copy of which is placed at Annexure-11 to the writ petition. A decision was taken to allow the contingent menials an opportunity of appointment against the sanctioned post in terms of 'the Rules' so framed. A notification to such effect was issued on 13.12.2014, a copy of the same is placed at Annexure-4 to the writ petition. The petitioners in view of the policy decision present at Annexure-4 thus became entitled for regular appointment against the sanctioned post. An Advertisement was published, a copy of which is present at Annexure-5 inviting application from the willing candidates for appointment against the post of Nai, Safai Mazdoors etc. and the petitioners responded thereto. Copies of the applications filed by each of the petitioners are enclosed with their respective writ petitions and in so far as the petitioner Nand Lal Singh is concerned it is at Annexure-6 to the writ petition. It is when no steps were taken for their regular appointment that the writ petitions have been filed.

A counter affidavit is filed and in paragraph 7 of the



counter affidavit it is stated that since these petitioners were less than 18 years at the time of their initial appointment hence their candidature for appointment was not considered by the screening committee. By filing a supplementary counter affidavit the decision of the screening committee has been placed on record vide Annexure 'B' thereof.

The petitioners have thereafter filed interlocutory applications in each of the cases bearing I.A. No.3505 of 2017 in CWJC No.19298 of 2016, I.A.No.3507 of 2017 in CWJC No.19309 of 2016 and I.A. No.3508 of 2017 in CWJC No.1416 of 2017. While the decision impugned in I.A. No.3505 of 2017 filed in CWJC No.19298 of 2016 would cover the case of the petitioner Nand Lal Singh and petitioner Rash Bihari Thakur, a separate decision is impugned in so far petitioner Krishna Thakur is concerned in IA No.3508 of 2017 filed in CWJC No.1416 of 2017.

To be more specific the decision of the screening committee enclosed with the letter of the Superintendent, Adarsh Central Jail, Beur dated 23.9.2016 impugned at Annexure 13 to I.A. No.3505 of 2017 filed in CWJC No.19298 of 2016 encloses the individual details of the candidates and in so far as the petitioner Nand Lal Singh is concerned, his name appears at running page 87 at serial no.3 and the name of petitioner Rash Bihari Thakur appears



at running page 90 at serial no.35.

In so far as the petitioner Krishna Thakur is concerned the decision is enclosed with the letter dated 25.9.2016 of the Superintendent, Central Jail, Purnea addressed to the Inspector General, Prisons and Reforms Services, Bihar, Patna and is impugned at Annexure-13 to I.A. No.3508 of 2017 filed in CWJC No.1416 of 2017 and the name of the petitioner Krishna Thakur appears at serial no.15 at running page 75. All these petitioners have been disqualified on grounds that they were below 18 years on the date of their initial engagement. The petitioners by filing interlocutory applications have sought leave to question the decision of the screening committee and which prayer is allowed. The interlocutory applications are allowed and the petitioners are permitted to question the decision of the screening committee in the writ petitions.

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

The only ground assigned by the respondents to disqualify the petitioners for appointment by way of regularization is that they were below 18 years on the date of their initial appointment. This very decision came up for consideration before a Bench of this Court in CWJC No.3710 of 2015 (**Brahmdeo Prasad**



vs. The State of Bihar) and the Bench vide judgment and order passed on 30.6.2015 has rejected the contention of the respondents to disqualify the petitioner of the said writ petition for appointment by way of regularization. The Court has come down heavily on the respondents in having taken work from the petitioners for almost two decades and yet disqualifying him on grounds that he was below age on the date of his initial engagement.

In my opinion the present batch of writ petitions are fit to be allowed by a simple reference to the judgment and order passed in the case of **Brahmdeo Prasad** (supra), a copy of which is present at Annexure-7 but then I would consider it appropriate to deal with the argument of the State Counsel that if the initial engagement of these petitioners were not valid then their simple continuation cannot enure to their benefit. The learned State Counsel has tried to distinguish the case of these petitioners from the Bench decision in the case of **Brahmdeo Prasad** (supra). In my opinion even this argument of the respondents is only taken to be rejected. Although the legal position as to the status of a daily wager is well settled that his appointment begins with the day and dispenses with at the end of the day but in support of my opinion I would also refer to the opinion expressed by the Supreme Court in the case of **State of Punjab vs. Jagjit Singh** reported in (2017)1 SCC 148 more



particularly paragraph 46.4 when the Supreme Court in consideration of the issue of equal pay for equal work claimed by a daily wager has opined thus :

“46.4 Temporary employees (irrespective of their nomenclature) are governed by any rules of disciplinary action. As a matter of fact, a daily wager is engaged only for a day, and his service can be dispensed with at the end of the day for which he is engaged. Rules of disciplinary action are therefore to the advantage of regular employees.”

Applying the principles so well settled to the present case and even accepting the stand of the respondents that the initial engagement of these petitioners may not have been valid as the petitioner(s) were below 18 years, yet in my opinion, the date on which each of these petitioners attained 18 years and were allowed to continue on their respective posts albeit on daily wages, it is that date which would be the date of their engagement for the purpose of consideration of their respective cases for appointment by way of regularization. Thus even if the period served by the petitioners prior to their attainment of the age of 18 years, is held invalid for the purpose of continuity of service, the continuous service rendered by each of them since after attaining the age of 18 years would be the foundation for consideration of their cases for their respective appointment(s).

Applying this principle to each of the cases, the date of



birth of petitioner Nand Lal Singh being 6.2.1978 he attained 18 years on 6.2.1996, in so far as the petitioner Rash Bihari Thakur is concerned his date of birth being 22.12.1980, he attained 18 years on 22.12.1998 and in so far as the petitioner Krishna Thakur is concerned his date of birth being 2.4.1965, he attained 18 years on 2.4.1983.

It is not in dispute rather admitted that these petitioners are in continuous service right from their initial engagement and even after the date on which they have attained 18 years. The respondents thus could not have disqualified these petitioners on age ground because undisputedly all these petitioners have been in continuous service after having attained 18 years, which would be the relevant factor in the present case for their regularization.

In view of the judgment of this Court passed in the case of **Brahmdeo Prasad** (supra) and in view of the legal position explained above the decision of the screening committee to disqualify these petitioners on age grounds impugned at Annexure-13 in I.A. No.3505 of 2017 filed in CWJC No.19298 of 2016 in so far as the petitioners Nand Lal Singh and Rash Bihari Thakur are concerned and I.A.No.3508 of 2017 filed in CWJC No.1416 of 2017 in so far as petitioner Krishna Thakur is concerned, cannot be upheld and are accordingly quashed and set aside.



The writ petitions are allowed. The petitioners are held eligible for appointment and the respondent Inspector General, Prison and Reforms Services, Bihar, Patna as well as the Superintendent, Adarsh Central Jail, Beur, Patna and Superintendent, Central Jail, Purnia shall accordingly pass appropriate orders in the case of each of the petitioners within a period of six weeks from the date of receipt/production of a copy of this judgment.

The writ petitions are allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-06-2017
Transmission Date	NA

