

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.756 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 3514 of 2011.

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Keshav Prasad, Son of Bhubaneshwar Prasad, R/o Near Isolation Ward Quarter,
Hospital Road, Mayaganj, P.S. Mayaganj, District Bhagalpur

.... Petitioner / Appellant

Versus

1. The State of Bihar,
 2. The Secretary, Personnel & Administrative Reforms Department, Bihar, Patna,
 3. The Secretary, Building Construction Department, Bihar, Patna,
 4. The Chief Manager, South Part, Building Construction Department, Bihar, Patna,
 5. The District Magistrate, Bhagalpur,
 6. The Deputy Development Commissioner, Bhagalpur,
 7. The Superintending Engineer, Building Circle, Bhagalpur,
 8. The Executive Engineer, Building Division, Bhagalpur,
 9. The District Welfare Officer, Bhagalpur,
 10. The District Planning Officer, Bhagalpur,
 11. The Deputy Collector, Establishment, Bhagalpur Collectorate, Bhagalpur
- Respondents / Respondents.
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Appearance:

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate and
Mr. Rajesh Kumar, Advocate.

For the Respondent/s : Mr. Prabhakar Jha, GP 27 and
Mr. Shankar Kumar Thakur, AC to GP 27.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 30-11-2017

Heard learned Senior Counsel for the appellant and
learned counsel representing the State.

2. The appellant is aggrieved by order dated 10.03.2016
passed by a learned single Judge of this Court in CWJC No. 3514 of
2011 by which the learned single Judge has been pleased to dismiss
the Writ Application. The grievance of the appellant is that admittedly



he had worked from the year 1982 to the year 2010 as a daily wager, during this period a policy decision was taken by the government vide Resolution dated 16.03.2006 whereunder a decision was taken that those daily wagers, who had worked during the cut-off period and were appointed prior to 11.12.1990, shall be considered for regularization by way of one-time-consideration, provided they fulfill the conditions *inter alia* that they have worked at least for a period of 240 days in a year as a daily wager. This was by way of one-time-opportunity.

3. Learned Senior Counsel for the appellant submits that no doubt earlier the case of the appellant was considered in the light of the said policy decision of the government and he was not regularized pursuant to the said consideration only because there was no vacant post in the General Category as per roster available in the year 2006 but when a person junior to the appellant came to be regularized in the year 2007, the appellant has got a case for regularization and the government cannot deny that because now by virtue of regularization of a person junior to the appellant, a right has accrued to the appellant for such regularization. Learned Senior Counsel further submits that on the one hand the appellant was not regularized in service but, at the same time, he has been removed as a daily wager in the year 2010 even without being paid the



retrenchment compensation as provided under the provisions of the Industrial Disputes Act as well as the Resolution dated 16.03.2006.

4. Learned counsel representing the State submits that the submissions advanced on behalf of the appellant before this Court have been considered and rejected by the learned single Judge for the reasons assigned in the impugned order. It is his submission that the appellant, when not regularized in the year 2006 because of non-availability of vacancy, did not challenge the said decision of the government; further when a person junior to the appellant came to be regularized, the appellant did not challenge that regularization and remained contented. Learned counsel for the State submits that in fact the appellant only when was removed as a daily wager, he came to this Court mainly raising his grievance against the removal but in the Writ Application a relief was also prayed for his regularization. Even the person junior to him, who is said to have been regularized, was not impleaded as a party respondent in the Writ Application and, in the circumstances, if the learned single Judge has refused to allow the reliefs prayed for in the Writ Application for regularization at this stage, no illegality or infirmity may be found with the same.

5. We have considered the rival submissions at the bar.

6. The submission of the learned for the State that the appellant did not challenge the policy decision of the government



while his regularization was refused for whatever reasons and then further that the appellant failed to challenge the regularization of a person junior to him, therefore, the prayer made by the appellant at this stage in the Writ Application was not fit to be allowed has got some force. It was too late to challenge the decision of the government which had already given some rights to the person regularized in service long back in the year 2007. He was not even impleaded in the Writ Application.

7. So far as the reliance placed by the learned Senior Counsel for the appellant on the policy decision of the government is concerned, we are of the view that the said policy decision or communication does not confer a positive right on a daily wager to continue in his status as a daily wager till his superannuation. No such policy decision is there and if the appellant was not continued as a daily wager in the year 2010, the only obligation on the State was to follow the procedure and, at least, the retrenchment compensation as per the policy of the government itself would have been granted. The decision removing the petitioner as a daily wager cannot be faulted with.

8. Learned counsel representing the State agrees that if a representation is filed by the appellant claiming any compensation in terms of the policy decision of the government, the same would be



duly considered in accordance with law and the policy decision of the government.

9. In view of the above facts and circumstances, we direct the respondent authorities that if a representation is filed by the appellant within four weeks from today, the same shall be considered by them and a decision in this regard shall be communicated to the appellant within a period of three months thereafter. If the respondent authorities come to a conclusion that some compensation is liable to be paid to the appellant, the same shall also be paid within a further period of one month.

10. The Appeal is otherwise dismissed without interfering with the order of the learned single Judge with the observations and directions, as indicated above, on the issue of compensation.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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