

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15214 of 2008

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1. Prabhunath Choudhary, son of Ram Awadh Choudhary, Resident of Village Harihara, P.O. Kamlakant Karriwa, P.S. Phulwaria, District Gopalganj.
 2. Sarajul Sain, son of late Ali Sain, Resident of Vilage Pendula Khas, P.O. Jagarnatha, P.S. Mirganj, Dist. Gopalganj.
 3. Surendra Yadav, son of Bishwanath Yadav, resident of Village Pendula Khas, P.O. Jagarnatha, P.S. Uchkagaon, Dist. Gopalganj.
 4. Shambhu Singh, son of Ramdeo Singh, Resident of Village Amatha Khen, P.O. Lain Bazar, P.S. Mirgan, Dist. Gopalganj.
 5. Bashishtha Narayan Singh, son of Dhenuk Singh, Resident of Village and P.O. Koini, P.S. Manjagarh, Dist. Gopalganj.
 6. Ganesh Mishra, Son of Shiv Pujan Mishra, Resident of Village Jagatpur Baid, P.O. Rudalpur, P.S. Bhore, Dist. Gopalganj. (Since dead)
 7. Hira Tatwan, son of Ram Surat Tatwan, Resident of Village Kushha, P.O. Sisai Bazar, P.S. Bhore, Dist. Gopalganj.
 8. Radhe Shyam Manjhi, son of Sudama Manjhi, Resident of Khadahi, P.O. Sisai Bazar, P.S. Bhore, Dist. Gopalganj.
 9. Dukhharan Choudhary, son of Late Rajbali Choudhary, Resident of Rajpur, P.O. Radhaganj, P.S. Phulwaria, Dist. Gopalganj.
 10. Anil Kumar Prasad, son of Chhatu Prasad, Resident of Village Kaparpura, P.O. and P.S. Mirganj, Dist. Gopalganj.
 11. Chaturbhu Mishra, son of Jhapasi Mishra, resident of Village Kanpura, P.O. Karvatahi, P.S. Kuchaikot, Dist. Gopalganj.
 12. Hari Narayan Choudhary, son of Mahadeo Choudhary, Resident of Village Bilarua, P.O. and P.S. Vijaipur, Dist. Gopalganj.
 13. Nagendra Tatwan, son of Hira Tatwan, Resident of Village Khadahi, P.O. Sisai Bazar, P.S. Bhore, Dist. Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary-cum-Commissioner, Environment and Forest Department, Bihar, Government, Patna.
3. The Secretary, Personnel and Administrative Reforms Department, Bihar Government, Patna.
4. The Joint Secretary, Environment and Forest Department, Bihar Government, Patna.
5. The Principal Chief Conservator of Forest, Bihar, Patna.
6. The Regional Chief Conservator of Forest, Muzaffarpur.
7. The Forest Conservator, Muzaffarpur Circle, Muzaffarpur.
8. The Divisional Forest Officer, Gopalganj, Forest Division, Gopalganj.
9. The Regional Forest Officer, Gopalganj.
10. The District Magistrate, Gopalganj.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15242 of 2008



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1. Ram Narayan Pandey, son of Late Jagdish Pandey, Resident of Village Nirjalha, P.O. Ratanpura, P.S. Gopalpur, Dist. Gopalganj.
 2. Akhilesh Pandey, son of Briksha Pandey, Resident of Village Kharea, P.O. Sonhula, P.S. Gopalpur, Dist. Gopalganj.
 3. Mukhtar Anshari, son of Rajbali Anshari, Resident of Village Binod Kharea, P.O. Sonhula, P.S. Gopalpur, Dist. Gopalganj.(Since dead)
 4. Ram Nath Choudhary, S/o Mukha Choudhary, Resident of Village Bharkhiyan, P.O. and P.S. Barauli, Dist. Gopalganj.
 5. Harihar Mali, S/o Nathuni Mali, Resident of Village and P.O. and P.S. Kuchaikot, Dist. Gopalganj. (Since dead)
 6. Paras Ram, son of Ramdhari Ram, Resident of Village Kharea, P.O. Kartalu Bazar, P.S. Kuchaikot, Dist. Gopalganj.
 7. Sat Narayan Manjhi, son of Dhanesar Manjhi, Resident of Village Banjaria, P.O. Dhabwan, P.S. Gopalpur, Dist. Gopalganj.
 8. Shambhu Nath Rai, son of Shiv Pujan Rai, Resident of Village Rajapur, P.O. and P.S. Gopalpur, Dist. Gopalganj.
 9. Balindra Rai, son of Late Vikram Rai, Resident of Villae Banjaria, P.O. Thebwa, P.S. Gopalpur, Dist. Gopalganj.
 10. Vinay Kumar Rai, S/o Badshah Rai, Resident of Village and P.O. and P.S. Gopalpur, Dist. Gopalganj.
 11. Lagandeo Singh, son of Sudama Singh, Resident of Village and P.O. Dumari, P.S. Manjhi, Dist. Chapra.
 12. Mangaldeo Singh, son of Sudama Singh, Resident of Village and P.O. Dumari, P.S. Manjhi, Dist. Chapra.
 13. Lal Bihari Prasad, son of Dwarika Prasad Goth, Resident of Village Takalpur, P.O. Janamath, P.S. Mirganj, Dist. Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary-cum-Commissioner, Environment and Forest Department, Bihar Government, Patna.
3. The Secretary, Personnel and Administrative Reforms Department, Bihar Government, Patna.
4. The Joint Secretary, Environment and Forest Department, Bihar Government, Patna.
5. The Principal Chief Conservator of Forest, Bihar, Patna.
6. The Reginal Chief Conservator of Forest, Muzaffarpur.
7. The Forest Conservator, Muzaffarpur Circle, Muzaffarpur.
8. The Divisional Forest Officer, Gopalganj, Forest Division, Gopalganj.
9. The Regional Forest Officer, Gopalganj.
10. The District Magistrate, Gopalganj.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 17302 of 2008

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1. Janardan Chaudhary, son of late Nagina Chaudhary, Resident of Village and P.O. Pachlakhi, P.S. Nautan, Dist. Siwan.
2. Rajendra Chaudhary, son of Nagi Chaudhary, Resident of Village Bali Chhapar, P.O. and P.S. Sidhwalia, Dist. Gopalganj.



3. Raj Keshwar Chaudaudhary, son of Surya Bali Chaudhary, Resident of Village Jamsar Bazar Tola Hata, P.S. Uchkagaon, Dist. Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-cum-Commissioner, Environment and Forest Department, Bihar Government, Patna.
3. The Secretary Personnel and Administrative Reforms Department, Bihar Government, Patna.
4. The Joint Secretary, Environment and Forest Department, Bihar Government, Patna.
5. The Principal Chief Conservator of Forest, Bihar, Patna.
6. The Regional Chief Conservator of Forest, Muzaffarpur.
7. The Forest Conservator, Muzaffarpur Circle, Muzaffarpur.
8. The Divisional Forest Officer, Gopalganj, Forest Division, Gopalganj.
9. The Regional Forest Officer, Gopalganj.
10. The District Magistrate, Gopalganj.

.... Respondent/s

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Appearance :

(In CWJC No.15214 of 2008)

For the Petitioner/s : Mr. Gyan Prakash

For the Respondent/s : Mr. Brajesh Kumar, AC to AAG-4

(In CWJC No.15242 of 2008)

For the Petitioner/s : Mr. Gyan Prakash

For the Respondent/s : Mr. Brajesh Kumar, AC to AAG-4

(In CWJC No.17302 of 2008)

For the Petitioner/s : Mr. Gyan Prakash

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-11-2017

For the reasons mentioned in I.A. No. 6208 of 2017, I.A. No. 7956 of 2017 and I.A. No.6375 of 2017 filed in all the three aforesaid writ applications, the prayer made therein is allowed and, accordingly, let the District Magistrate, Gopalganj be added as respondent in all the cases.

Learned counsel for the petitioners has submitted that during pendency, the petitioner no.6, namely, Ganesh Mishra of



C.W.J.C. No. 15214 of 2008 and petitioner nos. 3 & 5, namely, Mukhtar Anshari and Harihar Mali of C.W.J.C. No. 15242 of 2008 have died.

In that view of the matter, the writ applications C.W.J.C. No. 15214 of 2008 and C.W.J.C. No. 15242 of 2008 have become infructuous as against the aforesaid petitioner no.6 and petitioner nos. 3 & 5 respectively.

Heard learned counsel for the parties in all the cases.

In the present cases, the issue has been raised for regularization of the daily wager. It will be convenient to take the fact from C.W.J.C. No. 15214 for disposal of these writ applications.

The short fact is that the petitioners were engaged on daily wages during the period 1982 to 1990 in the Gopalganj Forest Department by the authorized Officer under the scheme of NREP - RLEGP. As per the petitioners, they are still continuing and receiving the wages from the plan head 2406 of the State Government. The payments are recorded in the Master Roll. The petitioners have placed reliance on the government circular no. 5940 dated 18.6.1993 wherein the policy was taken that the employees who have completed 240 days on and before 1.8.1985, will be regularized in service, vide resolution no. 489 dated 10.5.2005, the cut-off has been revised and extended to 11.12.1990 from 1.8.1985. Further vide circular no. 369



dated 16.3.2006, the Government decided to regularize the services of daily wagers on the basis of recommendation of the Committee constituted by the State as one time measure in view of the judgment passed in the case of State of Karnataka Vs. Uma Devi reported in 2006 (4) SCC 1, to complete the exercise vide Annexure-3 and 3/1 dated 22.6.2005 and 23.8.2005, the letters were written to Range Officer to supply the names of the daily wagers who have completed 240 days on or before 11.12.1990. The names were supplied by the Range Officer to the Conservator of Forest, Muzaffarpur Circle, Muzaffarpur. The meeting of the representative of the Management and the Union was held wherein it was decided to implement the settlement dated 12.6.2007 and the daily wagers would be regularized in service on the pattern of Maharashtra and West Bengal.

Learned counsel for the petitioners has further placed reliance on the letter no. 583 dated 11.5.2015 (Annexure-9) written by the District Forest Divisional Officer, Gopalganj to District Magistrate, Gopalganj attaching names of daily wagers who have completed 240 days on or before 1.8.1985 as also on or before 1990 in which the name of the petitioners were standing. The petitioners have also placed reliance on the letter contained in Memo No. 1974 dated 21.12.2007 (Annexure-10 Series) of the Forest Divisional Officer, Gopalganj addressed to the Conservator of Forest, Muzaffarpur



wherein it has been mentioned that the Union is pressing for regularization in service on the principle of West Bengal and Maharashtra wherein it has been mentioned that the persons who have entered as daily wagers already crossed their age and it is impossible for them to find out the alternative employment and they continued to remain attached with the work of the Forest Department, they have acquired the skill and the Forest Department can utilized their skill by creating the post like Shiksha Mitra and other Mitra. Further he has placed reliance on the letter dated 30.8.2010 wherein the meeting dated 11.7.2012 has been attached with letter showing three persons were regularized in service those who were appointed as daily wagers. Further the petitioners have placed reliance on the letter dated 21.9.2012 (Annexure-11) and letter dated 25.9.2017 (Annexure-12) by which the resistance was made by the daily wagers for engagement on M/s Cobra Industrial Security Force Limited. He has further said that they have worked regularly without break, they were working different type of jobs of forest, they have already worked for 20 to 30 years, now they have crossed the age, no chance of getting alternative employment, requested to make arrangement for their adjustment. Further the alternative prayer has been made in the I.A. 6208 of 2017 wherein the petitioners have made a prayer that direction be given to the District Magistrate, Gopalganj being Chairman of the Panel to



prepare the panel of daily wager employees and according to the seniority they should be regularized in service.

Learned counsel for the petitioners admit that their entry is irregular as the procedure has not been followed whereas learned counsel for the State has taken a plea that the appointment of the petitioners is per-se illegal, their entry is backdoor entry and they should be expelled from the door, their appointments were not made by the issuance of any advertisement nor against the sanctioned post without facing any selection committee. So the claim of the petitioners that their entry was/is irregular is not correct but, their entry is illegal. It has further been submitted that now there is a rule for regularization of Class-IV which has already been enforced on 26.3.2010 wherein the procedure has been prescribed in what manner the Class-IV employee can be brought in service. The State has further submitted that they were/are not regularly working but, engaged from time to time. The petitioners have not brought any material to show when they have entered into the service or they still continued to discharge duty.

Having considered the rival contentions of the parties, its well known principle of law that the entry through backdoor cannot be said to be irregular but, illegal, as no advertisement was published, no letter was issued for interview by the Committee constituted, nor



the panel was prepared against the sanctioned post, if such aforesaid procedure were are not followed, in such circumstances, the entry cannot be said to be in terms of Article 14 and 16 of the Constitution of India but, the question in the present case if the persons have been working for a long period and department cannot run its business without assistance of those persons, in such circumstances, it is the duty of the Department to formulate and find out the ways and means to departmentalize them, if they are allowed to continue for 20-30 years, thereafter left in lurch, is nothing but unfair labour practice, violates Article 21 of the Constitution of India. This Court cannot give direction for regularization in service but, the question is that when the works have been taken from them for such a long time, they could not raise the grievance because they did/do not have a bargaining power. Had the moment they raised the issue of regularization, certainly they would have been terminated from service.

Looking to the entire spectrum, this Court is of the view that if the daily wagers have been working for a long period, the State Government should formulate a scheme in what manner the grievance can be redressed. Of course a rule has been framed for appointment in the Group-D, certain nature of work in the forest department is seasonal and certain work continued for year. The maintenance of forest is a continuous process in order to protect the flora and fauna,



without assistance of the labour, it is very difficult to maintain the forest and protect the forest.

In that view of the matter, this Court directs the State to look into the matter and see in what manner their grievance can be redressed and whenever the vacancy would occur, the authority would consider their regularization in terms of the seniority after granting relaxation in age.

The authority will examine the matter in what manner their grievance can be redressed, the State will decide within a period of six months from the date of receipt of this order.

With the aforementioned observation and direction, all the writ applications are disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2017
Transmission Date	NA

