

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13831 of 2014

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1. Rajdeo Prasad Son of Late Tilakdhari Paswan, Resident of Village- Belama, Post Office- Dharmshala, Police Station- Tikari, District- Gaya.
 2. Rajeshwar Paswan, Son of Late Ramdhari Paswan, Resident of village and Post Office- Dharmshala, Police Station- Tikari, District- Gaya.
 3. Baleshwar Ram, Son of Late Keshwar Paswan, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 4. Chandeshwar Ram, Son of Late Kashwar Paswan, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 5. Ram Bachan Prasad, Son of Late Shivilal Prasad, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 6. Dwarika Yadav, Son of Late Narayan Yadav, Resident of Village- Kashara, P.O.- Dharmshala, P.S.- Tikari, District- Gaya
 7. Ramchandra Pandit, Son of Late Ritu Prajapati, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 8. Rajnandan Sharma, Son of Ram Vilash Sharma, Resident of Village- Gularichak, Post- Office- Simuara, Police Station- Tikari, District- Gaya.
 9. Mishri Paswan, Son of Late Ram Vishun Paswan, Resident of Village- Dharmshala, Post- Office-Dharmshala, Police Station- Tikari, District- Gaya.
 10. Vijay Ram Son of Late Dashrath Ram, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 11. Kishori Paswan, son of Late Ramvishun Paswan, Resident of Village- Dharmshala, Post- Office-Dharmshala, Police Station- Tikari, District- Gaya.
 12. Durjan Nonia, Son of Late Lala Nonia, Resident of Village- Nepa, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 13. Chaturi Prasad, Son of Late Balgovind Mahto, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 14. Surendra Prasad, Son of Late Bhagwan Das, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 15. Narsingh Yadav, Son of Late Ramsahay Yadav, Resident of Village- Dariyapur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 16. Ram Brichh Prasad, Son of Late Shivilal Mahto, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 17. Mithlesh Prasad, Son of Late Nathun Mahto, Resident of Village- Fatehpur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 18. Surendra Prasad Yadav, son of Ram Barat Yadav, Resident of Village- Dariyapur, Post- Office- Fatehpur Nepa, Police Station- Tikari, District- Gaya.
 19. Suresh Raj Son of Baldeo Yadav, Resident of Village- Balsari, Post Office- Laxmipur, Police Station- Bela, District- Gaya

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Food and Supplies, Government of India, New Delhi
2. The Secretary, Ministry of Labour and Employment, Government of India, New Delhi
3. The Chief Manager-cum-Managing Director, Food Corporation of India, New Delhi
4. The Assistant General Manager, Food Corporation of India, Head Quarter, New



Delhi

5. The Assistant General Manager, Food Corporation of India, Zonal Office, Patna
6. The General Manager (Area) Food Corporation of India, Patna
7. The Area Manager, Food Corporation of India, North Church Road, Gaya
8. The Regional Labour Commissioner (Central), Patna
9. The Labour Enforcement Officer (Central), Gaya

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13894 of 2014

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1. Ramkrit Paswan Son of Late Kedar Paswan, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
2. Pradeep Kumar, Son of Sarju Thakur, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
3. Vasudeo Rajak, Son of Late Hari Charan Rajjak, Resident of Village- Nepa, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
4. Sarju Thakur Son of Late Bipat Thakur, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
5. Nayeemuddin, Son of Md. Barik Mian, Resident of Village- Rebad, P.O.- Chakand, P.S.- Bela, District- Gaya
6. Ram Ratan Ram, Son of Late Mahabir Ram, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
7. Kara Nonia, Son of Late Nathari Nonia, Resident of Village- Nepa, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
8. Umesh Nonia, Son of Buta Nonia, Resident of Village- Nepa, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
9. Naga Paswan, Son of Late Karu Paswan, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
10. Babulal Sharma, Son of Late Mahabir Mistri, Resident of Village- Nepa, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
11. Rambali Thakur, Son of Late Bisheshwar Thakur, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
12. Rambali Ram, Son of Late Bipat Ram, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
13. Narendra Nath Verma, Son of Late Judagi Mahto, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
14. Naresh Yadav, Son of Late Sanichu Yadav, Resident of Village- Dariyapur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
15. Vijay Kumar Son of Late Kail Yadav, Resident of Village- Dariyapur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
16. Musafir Yadav, Son of Late Mohan Yadav, Resident of Village- Dariyapur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya
17. Laldeo Paswan, Son of Raghuveer Paswan, Resident of Village- Fatehpur, P.O.- Fatehpur Nepa, P.S.- Tikari, District- Gaya

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Food and Supplies, Government of India, New Delhi



2. The Secretary, Ministry of Labour and Employment, Government of India, New Delhi
3. The Chief Manager-cum-Managing Director, Food Corporation of India, New Delhi
4. The Assistant General Manager, Food Corporation of India, Head Quarter, New Delhi
5. The Assistant General Manager, Food Corporation of India, Zonal Office, Patna
6. The General Manager (Area) Food Corporation of India, Patna
7. The Area Manager, Food Corporation of India, District Office, North Church Road, Gaya
8. The Regional Labour Commissioner (Central), Patna
9. The Labour Enforcement Officer (Central), Gaya

.... Respondent/s

Appearance :

(In CWJC No.13831 of 2014)

For the Petitioner/s : Mr. Nawal Kishor Prasad
For the UOI : Mrs. Kanak Verma, CGC
For FCI : Mr. Prabhakar Tekriwal, Advocate

(In CWJC No.13894 of 2014)

For the Petitioner/s : Mr. Nawal Kishor Prasad
For the UOI : Mrs. Kanak Verma, CGC
For FCI : Mr. Prabhakar Tekriwal, Advocate

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 03-07-2017

Heard learned counsel for the parties.

The present writ application has been filed for a direction to the respondent authorities to regularize the services of the petitioners on Class IV posts in Food Corporation of India (hereinafter referred to as the 'FCI') as they have worked as casual labourer from September, 1977 to June, 1984 in the Airstrip, Panchananpur FCI Godown in the District of Gaya and they have been retrenched without any notice and also to make payment of wages for the period they have worked, along with due compensation.



It is submitted by learned counsel for the petitioners that the petitioners were engaged by the Management of Airstrip of Panchananpur FCI Godown in the year 1977 by the Area Manager of FCI and they worked there till June, 1984 until they were retrenched and the entire stock and storage of the godown was shifted when other labourers were adjusted at different place, but inspite of the fact that the petitioners worked for more than 240 days in one calendar year, they were not adjusted. The State Joint Secretary of the FCI Executive Staff Union namely Vijayendra Kumar raised industrial dispute for resolution on behalf of Jai Shankar Prasad (not petitioner) and 64 others ex-casual workers by submitting reference to the Regional Labour Commissioner, C, Patna as contained in Annexure 2.

The matter was taken up by M.K. Choudhary, Assistant Labour Commissioner (Central) Patna on 14.2.1994. During the course of reference proceeding, the parties were heard but the settlement could not be made and the failure of conciliation report was submitted to the Secretary, Government of India, Ministry of Labour, New Delhi vide Failure Report dated 27.4.1994 with a note that on suggestion to resolve the dispute by way of arbitration but neither the Union nor the Management agreed to the same. However, the said failure report was never challenged, but subsequently the



dispute was again raised on 8.7.2011 by 42 alleged ex-casual labour through the President of Bihar Rajya Dukan avam Pratisthan Karmchari Sangh before the Assistant Labour Commissioner (Central), Ministry of Labour and Employment, Patna. Dr. S.S. Sharma, the then Assistant Labour Commissioner (Central), Patna vide communication dated 30.7.2012 recorded failure of conciliation and the same was intimated to the Secretary, Ministry of Labour and Employment, Government of India, New Delhi, as gets reflected from Annexure 9. Thereafter, the present writ applications were filed on 11.8.2014 and 12.8.2014, respectively.

It is submitted by learned counsel for the petitioner that the engagement of casual labourer at the Airstrip of FCI godown suggests that the petitioners worked as casual labourers. However, this is admitted fact that the failure report initially recorded vide Annexure 4 has never been challenged. Parity has been tried to be claimed with regard to another casual workman, namely, late Jamuna Thakur in whose favour the award was made and certain payments were made. In the background of aforesaid facts, the petitioners are claiming regularization.

It is submitted by Mr. Tekriwal, learned counsel appearing for the FCI that there is nothing on record to suggest that the petitioners ever worked as casual workmen in the godown in



question. Annexure 1, the engagement chart has been brought on record of these writ applications for the first time, but the same was never placed before the authorities either in the first reference or in the second reference. Hence, Annexure 1 is absolutely a forged document. Since the petitioners and others failed to prove that they worked as workmen hence they cannot raise a dispute under section 2(k) of the Industrial Disputes Act. The Airstrip godown of FCI at Gaya caught fire in 1980 and it was closed hence the petitioners' claim that they worked till 1984 has no meaning as none worked in the godown. The petitioners have not brought on record any document that they were retrenched in 1994. Moreover, in the first reference as contained in Annexure 2, the specific plea of the petitioners was that if there is no chance of settlement of the dispute then it may be referred to the Government of India for further reference to the Tribunal. The aforesaid plea reads as follows:

“9. In view of the above, I request you kindly to hold conciliation proceeding in the matter for amicable settlement of the dispute at this stage but if there is no chance of settlement then it may be offered to the Govt. of India for further reference to the Tribunal on the following terms:-

“Whether the action of the management of Food Corporation of India in retrenching the concerned workmen S/Shri Jai Shankar Prasad and 64 others



w.e.f. Aug – 84 in violation of sec.'25 F of the I.D. Act. 1947 and denying regularization and payment of wages and other benefits equal to regular workmen is legal and justified?"

The failure of conciliation report was submitted by the Assistant Labour Commissioner to the Secretary, Government of India, Ministry of Labour and Employment but no application was ever made before the Government of India to refer the dispute to the Tribunal and after seventeen years the issue was raised again when second reference was made on 18.7.2011 though by the President of different Union known as Bihar Rajya Dukan avam Pratisthan Karmchari Sangh and that too with regard to payment of wages and not regularization. The failure report for the second time was recorded on 30.7.2012 and thereafter on 11.8.2014/12.8.2014 these writ applications were filed. Hence, the petitioners tried to raise a stale claim on the basis of documents which were never produced before the authorities concerned. As such, the writ applications are fit to be dismissed.

Learned counsel for the Union of India supports the contention of learned counsel for the FCI basically on the ground that since there is no reference that the petitioners ever worked as workmen, hence, there is no question of raising any industrial dispute



so much so, after about two decades of the initial failure report submitted by the authorities. The case of the petitioner has no parity with that of Jamuna Thakur, as Annexure 1 does not include the name of Jamuna Thakur though there is award in his favour which is still under challenge.

Considering the rival submissions of the parties, this court is of the view that the petitioners have prima facie miserably failed to bring on record any document to suggest that they worked as casual labourers or there was any assurance of regularization by the authorities concerned, Though, through Annexure 1, the engagement chart with regard to the petitioners, has been brought on record but for the first time in the writ application as the same has never been produced before the authorities, moreover, the genuineness of the same has been disputed by the learned counsels for the respondents.

Thus, in view of the serious dispute with regard to the actual status of the petitioners as workmen coupled with the fact that the petitioners, for the first time in this writ proceedings, have brought on record certain documents to remotely suggest their status as workmen, this Court is afraid as to whether in a writ proceeding under Article 226 of the Constitution of India such dispute can be adjudicated, solely on the basis of affidavits. Moreover, the Failure Report, in the absence of any challenge, has also attained finality and



has remained as such for last twenty years, hence, the petitioners have not made out a case of interference by this Court.

This writ application, accordingly, stands dismissed but without any orders as to costs.

(Dinesh Kumar Singh, J)

Anil/-

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

