

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12 of 2017

- =====
1. Banaras Prasad, son of Sri Dahu Mahto, resident of village Bhagwanpur, Pachwara, P.O. Bargaon, P.S. Nalanda, District Nalanda.
 2. Sukhdeo Rai, son of Late Dalo Rai, resident of village Garmatari, Post Office Balamra, P.S. Banka, District Banka.
 3. Suresh Prasad Sah, son of Sri Padarath Sah, resident of village- Baidadih, P.O. Ram Chandrapur, Itahari, P.S. Amarpur, District Banka.
 4. Satya Narayan Mandal, son of Sri Bama Mandal, resident of village- Fait, P.O. Fait, P.S. - Basopatti, District- Madhubani.
 5. Sattan Yadav, son of Jageshwar Yadav, resident of village- Jawaharipur, P.O. Tilka Manjhi, P.S. Kotwali, District- Bhagalpur.
 6. Kedar Prasad, son of Late Janki Mahto, resident of village- Lodipur, P.O. Hulasganj, P.S. Hulasganj, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Bhagalpur.
3. The Superintendent Engineer, Irrigation Circle, Bhagalpur.
4. The Superintending Engineer, Ganga Pump Canal Circle, Bhagalpur.
5. The Executive Engineer, Irrigation Division, Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Adv.
Mr. Sudhir Kumar, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC-11

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-12-2017

Heard Mr. Banwari Sharma, learned counsel appearing
for the petitioners and Mr. Vikash Kumar, learned Standing
Counsel No.11 for the State.

Undisputedly the petitioners have been regularized in
service vide order bearing Memo No.646 dated 4.3.2016, a copy of
which is enclosed at Annexure 19 to the writ petition. The
grievance of the petitioners is that the order makes the



regularization prospective and not from the date of initial appointment of the petitioners or with effect from 1.2.1999 when the petitioners were granted the minimum of scale granted to Class IV employees in the light of the judgment and order passed by this Court in a batch of writ petitions but which grant was made subject to final outcome of the challenge made by the State to the order passed by this Court.

It is argued by Mr. Sharma, learned counsel appearing for the petitioners that having been granted the minimum of scale of Class IV the inaction of the respondents in not taking steps for regularization of the petitioners led to the second round of proceedings arising from CWJC No.1373 of 2014 which was disposed of on 13.2.2015 with a direction to the Chief Engineer to consider the claim of the petitioners for regularization and for passing appropriate order, a copy of which is enclosed at Annexure 18 to the writ petition. He submits that although the order has been complied by the respondents to result in the order bearing Memo No.646 dated 4.3.2016 but the regularization has been made prospectively and not from the date the petitioners were granted the minimum of the scale.

Mr. Sharma has relied upon an order passed in the case of some of the employees in the Water Resources Department



bearing Memo No.5138 dated 14.10.2005 at Annexure 21 to the supplementary affidavit to submit that whereas in their cases a regularization has taken place with effect from the date of their initial appointment, in so far as the cases of the petitioners are concerned although the date of initial appointment of the petitioners goes back much before but it is not even from the date of grant of minimum scale that the order of regularization has been passed to the detriment of the petitioners.

Although a counter affidavit was initially filed relying upon the circular dated 16.3.2006, a copy of which was placed at Annexure A to the counter affidavit and in reference where to it was submitted that paragraph 3(1) very clearly stipulates that all regularization of daily-wagers would be done with immediate effect i.e. prospectively but since an order of regularization relied upon by Mr. Sharma while had given retrospective relief to some of the employees that the learned State Counsel was directed to seek instruction and accordingly a supplementary counter affidavit is filed.

Mr. Vikash Kumar, learned Standing Counsel No.11 in reference to the statement made in paragraphs 4 and 5 of the supplementary counter affidavit has submitted that while the order of regularization of the petitioners is strictly in tune with the



circular dated 16.3.2006 under which their cases were considered for regularization and which makes the same prospective in operation, in so far as reference is made to Annexure 21, the comparison is distinguishable because Annexure 21 relates to absorption of work charge employees which has been done in tune with the resolution of the Finance Department bearing No.5074 dated 20.9.1990 and 17.10.2013. He submits that whereas the work charge employees had already been given a temporary status under the circular but these petitioners since their engagement have continued on daily wages albeit in the minimum scale of Class IV in the light of the order passed by this Court. It is thus submitted that the two cases are totally different and the petitioners who are admittedly daily wagers had to be considered in tune with the circular dated 16.3.2006.

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

The issue argued by Mr. Sharma, learned counsel appearing for the petitioners stands answered in the judgment of the Supreme Court reported in (2005) 13 SCC 246 (**Punjab State Electricity Board Vs. Swaran Singh**) wherein it has been held that normally regularization would be prospective in effect and not from the date of initial appointment. Even otherwise the very circular



under which these petitioners have been regularized i.e. circular dated 16.3.2006 very clearly stipulates that the order of regularization would be prospective in nature. The comparison made by the petitioner with the employees of the Work Charge establishment is thus totally out of context for the two cases have no parity.

In the circumstances discussed no cause for indulgence is made out. The writ petition is dismissed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14-12-2017
Transmission Date	NA

