

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10989 of 2018**

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Rajdeo Sah, S/o Shri Tapeswar Sah, R/o Tilka Manjhi Chowk Sukhikal (Bal Krishna Nagar), P.S. Barari, District- Bhagalpur

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Irrigation Department, Government of Bihar, Patna
2. The Secretary, K.B.C. CADA, Bhagalpur
3. The Executive Engineer (Mechanical) CADA, Bhagalpur
4. The Superintending Engineer K.B.C. CADA, Bhagalpur
5. The Divisional Commissioner- Cum- Charman K.B.C. CADA, Bhagalpur

... .. Respondents

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**Appearance :**

|                      |   |                                                       |
|----------------------|---|-------------------------------------------------------|
| For the Petitioner/s | : | Mr. Siya Ram Sahi, Advocate<br>Mr. Rajiv Ranjan Singh |
| For the Respondent/s | : | Mr. Sumant Kumar Singh, G.A.-2                        |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date : 05-10-2018**

Heard leaned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is challenging the order containing memo no.5041 dated 31.10.2012, by which the case of the petitioner was considered by the Principal Secretary, Water Resources Department and rejected the same on the ground that his appointment along with other 61 persons were found to be illegal by the C.A.G.



3. The petitioner was appointed as daily wager and later on, as per the petitioner, he was regularized in service vide memo no. 21 dated 07.01.1989 on temporary basis, which was challenged by one Mahesh Prasad Mandal and others in C.W.J.C. No.9398 of 2000, seeking relief for quashing the order dated 19.08.2000, thereby their services as daily wagers was terminated and sought the relief of reinstatements. This Court vide order dated 09.01.2001 refused to interfere with the order and given liberty for consideration of their appointment in future. However, the Court directed for payment of salary for the period they discharged the duty. That order led to termination of service of the petitioner, which was challenged by him in C.W.J.C. No. 12781 of 2003 (Nand Lal Prasad and Anr. vs. State of Bihar and Ors.) and this Court, in Single Bench, refused to interfere with the order as followed the same ratio as that of C.W.J.C. No.9398 of 2000. That order of the Single Bench was challenged in L.P.A. No.137 of 2009 and the Division Bench has disposed of the said L.P.A. with a direction for consideration of their regularization. As per the petitioner it is an order of *mandamus* for respondents, but on reading the entire order, it does not reflect that the Court has issued the writ of *mandamus*. It will be relevant to quote entire order dated



passed in L.P.A. 137 of 2000, which is as follows:-

*“The present appeal has been preferred by the appellants herein being the petitioners in the C.W.J.C. No.12781 of 2003. The said writ petition was dismissed by the learned Single Judge, wherein the writ petitioners have questioned the order of termination and according to them they were regular employees. The case of the respondent agency is that they were daily wage workers but subsequently their services have been terminated and the guidelines laid down by the Apex Court in the case of Uma Devi is not applicable in the case of the writ petitioner-appellant herein. But, however the learned Single Judge having heard the matter directed the State Government for fresh consideration in the future vacancies.*

*Learned counsel for the appellant has submitted that the appellant has been working in the agency for the last 20 years and at this point of time it was directed to apply for future post but there will be no age relaxation and the appellants were out of employment awaiting for future appointment. But however, we do not want to go into the merits of the case, but the admitted fact remains that the appellants have worked for many years as daily wage workers on regular vacancies for being regularized. But however as they were not working as of today, we are of the opinion that would suffice if the matter is remanded back to the Secretary, Water*



*Resources Department, even though he is not a part who shall pass an appropriate orders for regularizing of their services on the post they held prior to the termination on consultation with the 2<sup>nd</sup> respondent in accordance with law.*

*With the above modification in the order of the learned Single Judge these L.P.A.s are accordingly disposed of.”*

4. In pursuance of the aforesaid order, the Commissioner has considered the case of the petitioner and has found that 61 persons who were appointed along with petitioner were found to be illegal in the report of the C.A.G. and placing reliance on the same, thereby refused to interfere with the order, having held that the petitioner is not entitled for the relief of regularization.

5. Leaned counsel for the petitioner submits that as the petitioner was directly appointed and later on absorbed in the service and so far the others are concerned, they were daily wage employees and the case of the petitioner is not comparable with the case of others, hence, the petitioner has wrongly been visited with termination order rather direction was given for regularization. However, in the order of L.P.A. itself it has been recorded that on the date of passing the order the petitioner was not in service, he was out of service.



6. In the counter affidavit, the State has taken a plea that the matter was examined by the C.A.G. and the appointment of the petitioner was found to be illegal, having been explained in paragraph no.12 of the counter affidavit, which are as follows:-

*“12. That the petitioners submitted representation in the Water Resources Department on 06.06.2012 enclosing a copy of the aforesaid order. The Agency was directed to send its comment on their representation. The Agency sent its comments stating the aforesaid facts and justifying the order of termination dated 24.10.2003. In compliance of the order of the Hon'ble Court, the Principal Secretary of the Water Resources Department, Bihar reconsidering the matter in the light of the aforesaid decisions of this Hon'ble Court and found that service of 61 persons have been terminated on the basis of report of the CAG and this Hon'ble Court declined to interfere with the orders of termination. As such the order of termination of service of these petitioners as issued by the Agency is in accordance with law and does not require any interference. The Principal Secretary rejected the claim of the petitioner vide a reasoned order contained in memo no.504 dated 31.10.2012, memo no.118 dated 20.2.2017. Copies of the said order was communicated to the petitioner and others concerned.”*



7. It is also a fact that the persons who are in the list of 61 employees, have also not been given any benefit.

8. In such view of the matter, this Court does not find any substance in the writ petition. Accordingly, the same is dismissed.

**(Shivaji Pandey, J)**

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