

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14035 of 2008

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1. Ramashankar Choudhary, son of Shri Ram Narayan Choudhary, resident of Village Kalwari, P.S. Kanti, Dist. Muzaffarpur.
 2. Kishori Das, son of late Charitar Das, resident of Mahua, P.S. Pipara, District East Champaran.
 3. Ramjee Sah, son of late Ganesh Sah, resident of Village Laukana, P.S. Chakia, Dist. East Champaran.
 4. Suresh Kumar Rai, son of late Domi Rai, Resident of Village Bhangaha Chandpur, P.S. Janaki Nagar, Dist. Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Science and Technology, Government of Bihar, Patna.
2. The Director, Department of Science and Technology, Bihar, Patna.
3. Principal, Muzaffarpur Institute of Technology, Muzaffarpur.
4. The District Magistrate cum Collector, Muzaffarpur.
5. Deputy Collector, Nazarat, Muzaffarpur.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Santosh Chandra Bhaskar, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-02-2018

Heard learned counsel for the parties.

In the present case, the petitioners are claiming for regularization in service on Class-IV post and the bar of educational qualification of 8th class cannot be invoked to deprive the relief of regularization. It has been stated by the learned counsel for the petitioners that the petitioners fulfill all the requisite qualification while working as daily wage employee, have been deprived of regularization though they have been working on the said post for



more than 12 to 25 years.

As having been claimed that the Ramashankar Choudhary, petitioner no.1 was appointed on Class-IV post in the month of December, 1981, Kishori Das, petitioner no.2 was appointed on 25.6.1990, Ramjee Sah, petitioner no.3 was appointed on 1.2.1991 and Suresh Kumar Rai, petitioner no.4 was appointed on 1.12.1991. They were working regularly on daily wage basis and, time to time, several circulars were issued for regularization of the services. The petitioners have approached this Court in C.W.J.C. No. 6712 of 1999 in which the entire facts have been mentioned in what manner they have been denied their right of regularization though they were working for server years and it was the laches of the authority concerned denied regularization in service and the court has held that in the event the Director decides to fill up the post indicated in the said letter, he should complete the process within another three months of his decision in accordance with law after giving benefit to the petitioners of their past services concerned to the Muzaffarpur Institute of Technology, Muzaffarpur in capacity of Class-IV employees and also grant them relaxation of age. Those of the petitioners who have continued to serve the Muzaffarpur Institute of Technology, Muzaffarpur during the pendency of this application should not be disturbed until the decision to fill up the post against



which they were working is decided to be filled up and regular appointment is made giving them the benefit of past experience in age relaxation. When the order was not implemented, contempt applications were filed for carrying out the order of this Court. It further appears that the Muzaffarpur Institute of Technology, Muzaffarpur has informed the District Magistrate and Director, Science and Technology about the vacancy position and from there, it appears that 18 post of Class-IV employee were vacant. It also appears that the Principal has also sent the list of 27 persons who were not regularized in service in which the name of the petitioners also find place. After long battle, a panel was prepared, but the names of the petitioners were not included on the plea that their educational qualification was below 8th class, the minimum requisite educational qualification. In this manner, they were not regularized though the efforts were taken by the petitioners, filed representations from time to time for their assimilation in the regular post of Class-IV but it was unsuccessful attempt on the part of the petitioner to get regularization in service. One of the reason which has been assigned that the petitioner does not have a requisite qualification as having stated that they are only seventh pass in which the representation was filed that at the relevant time there was no minimum qualification to discharge the duty of the Class-IV, so the rider which has been fixed for



regularization in service that the person must have a certain qualification of eight class, is out of context. So it should not be taken into consideration for regularization. The petitioners in support of their submission placed reliance in the case of *Ashok Kumar Sharma & Ors. Vs. The State of Bihar through the Chief Secretary & Ors.* reported in 2016(1) PLJR 232 and in the case of *Jai Kishun Ram & Ors. Vs. The State of Bihar & Ors.* reported in 2016 (1) PLJR 512.

Now a fresh affidavit has been filed by the State in which the State has brought on record that the Government has framed a rule in the name and style of Bihar Group D Recruitment and Service Condition Rule, 2009 wherein the qualification and procedure for appointment of Class-IV employee has been mentioned and those who are fulfilling the qualification can only be considered for their regularization and the rule itself provides that the selection committee will be headed by the District Magistrate of the district and along with other members and the selection would be done as per the prescribed procedure mentioned therein. Further it appears from the counter affidavit that in view of the judgment passed by the Apex Court in the case of *Secretary State of Karnataka Vs. Uma Devi* reported in (2006) 4 SCC 1 wherein it has been provided that entry of person through the back door is completely illegal appointment and cannot be a basis for the regularization. Only those cases where the appointment is irregular



and having works for ten years without intervention of the Court by way of one time exercise, the regularization of the employee has been done.

In the present case the petitioners did not have a proper qualification and their entry was from the backdoor without any advertisement without following proper procedure, the stipulation mentioned in the said circular may create right of consideration for regularization but, essential qualification of VIII standard cannot be ignored and waived. Basic thrust has been given by the petitioner and they have worked for a long period, time to time the government has come out with a scheme of regularization but, have failed to give the benefit in terms of those circular, this Court cannot give direction to waive the minimum qualification and it is also relevant, in view of 2009 Rule, it has superseded all previous circulars and executive instructions and the previous circular has lost its efficacy in the matter of regularization in service.

Having given the anxious consideration of the facts and the law involved in the present case, the judgments which has been placed reliance stipulates, in the terms of notifications of the State Government, if any person or persons has or have worked for more than 240 days preceding five years would create a right of consideration for regularization, but the Court has not dealt with the



issue of essential qualification. A person who has been working for a long period on daily wages does not have requisite qualification will not create a right of regularization as the status of daily wage worker is quite different to the status of regular employees. A person may be allowed to work on daily wages basis below requisite qualification but, when events come for regularization, certainly necessary minimum qualification will be taken into consideration for regularization.

In such view of the matter, this Court does not find any merit in the present case but, this Court is of the view that if any time any fresh advertisement is published and the petitioners apply for their appointment and fulfill all the requisite conditions, which is required for the Class-IV employees, in such circumstances, the District Magistrate will grant the maximum limit of age relaxation, would consider the cases of the petitioners for their appointment.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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