

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5208 of 2015

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Nagendra Singh. Son of Shiv Nandan Singh, C/o Shri Indrajeet Singh. Resident of
Village - Sirsi, P.O.- Sirsi, P.S.- Bakhtiyarpur, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Electoral Officer, Election Department, 7, Mangles Road, Patna.
3. The Deputy Chief Electoral Officer, Election Department, 7, Mangles Road,
Patna.
4. The Joint Secretary, Election Department, 7, Mangles Road, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar Pandey, Advocate
For the State : Mr. Sanjay Kumar, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 27-08-2018

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

2. Pursuant to order passed on the petitioner's earlier writ
petition bearing C.W.J.C.No. 13906 of 2010, petitioner's claim for
regularization has been considered and the same has been rejected
on the ground that he does not fulfil 240 days in the last five years
prior to the cut off date 11.12.1990.

3. The issue has since been clarified by the Division Bench
of this Court, passed in case of **Ashok Kumar Sharma & Ors. vs.**
The State of Bihar through the Chief Secretary & Ors. reported
in **2016(1) PLJR 232** that the claim of such persons who were
engaged on daily wages prior to 11.12.1990 and have worked for
240 days prior to 11.12.1990 has to be considered. Petitioner claims
to be in the casual employment with effect from 15.10.1989. This



fact has neither been denied nor disputed by the respondents even though they have filed counter affidavit. The petitioner therefore in terms of the interpretation of the resolution of the State Government dated 16.3.2006 in case of **Ashok Kumar Sharma (supra)** is entitled to consideration of his claim for regularization in light of the observations made in paragraph 6 of the said judgment which is being reproduced herein below:-

Learned counsel for the appellants submits that the history of the action taken by the State Government, for regularization on daily wages employees, if taken into account, would show that there are two classes of employees. He first draws attention of this Court to the resolution of the State Government being resolution no.5940 dated 18th June, 1993 in this regard. Here, it clearly mentions that the State Government Patna High Court LPA No.1690 of 2013 dt.14-09-2015 had issued cut off date as 01.08.1985 that henceforth there would be no recruitment on daily wages after cut off date. Therefore, it was decided that regularization would be done only in respect of those daily wagers who had been employed for 240 days prior to 01.08.1985, but number of Government Employees Trade Union raised various demands, especially in view of the fact that notwithstanding the aforesaid restriction put by the State Government, due to exigency of work and non-recruitment, large number of people had been employed even after 01.08.1985 on daily wages. Having considered the demand of the Employees Trade Union, whereby the earlier benefit of regularization of daily wagers of which the cut off date was 01.08.1985, this was extended up to 11.12.1990, which is evident now from resolution of the State Government dated 16.03.2006 (Annexure-2 to the Letters Patent Appeal). Thus, all those persons, who had been employed on daily wage but had not worked for 240 days up to 11.12.1990, were held to be liable to be regularized as such, provided they had worked on sanctioned vacant posts. This was one category, which was covered by the earlier Government resolution as extended, pursuant to trade union agreement. It is then pointed out and rightly so, in our view, the other category of daily wagers, who were to be considered for



regularization, were Patna High Court LPA No.1690 of 2013 dt.14-09-2015 those who were appointed after 11.12.1990 may be up to 2006. It is in respect of these that new stipulation in the resolution of 2006 was laid down that they would be required to complete 240 days per year for five (5) continuous years for their regularization. It is submitted by the appellants that they are in the first category and not in the second category. Considering that they, as the first category, had been regularized by the conscious decision of the State Government, without noticing or realizing the difference, the regularization order has been withdrawn putting them in the second category. It is submitted that the learned Single Judge did not appreciate those distinctions and this categorization. It is also pointed out that this dichotomy of two categorizations was noticed by the department and a clarification was sought for from the Personnel Department. The clarification was that all employees employed on daily wages would have to satisfy the condition of having worked for 240 days per year for five (5) continuous years. What was the reason for this singular condition was not explained ?

4. Such consideration in light of the law laid down by this Court is to be done by the respondent no.2. Let such consideration be made in light of the observations herein above on basis of aforesaid judgment in case of **Ashok Kumar Sharma (supra)** within a period of eight weeks from the date of receipt/production of a copy of this order.

5. The writ petition is disposed of.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.9.2018
Transmission Date	NA

