

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9458 of 2017

1. Dinesh Prasad, Son of Sri Ram Das Thakur, resident of Village + P.O.- Musepur, P.S. Bihta, District- Patna at present working in the office of Tilaiya Canal Division, Wazirganj, in the District- Gaya.
2. Raj Kumar Thakur, Son of Late Ram Thakur, resident of Village- Kathe Kurth, P.S.- Masurih, District- Patna at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
3. Jaldhar Pandit, Son of Late Ram Ayodhya Pandit, resident of Mohalla- Samastipur, P.S.- Bhagalpur, District- Bhagalpur at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
4. Nand Lal Prasad, Son of Shri Lakhan Prasad, resident of Village- Punawan, P.S.- Wazirganj, District- Gaya, at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
5. Chandeshwar Paswan, Son of Late Sukan Paswan, resident of Village- Dariapur, P.S.- Parsa, District- Chapra at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
6. Umesh Prasad Singh, Son of late Kamta Singh, resident of Village- Kalhana, P.S. Wazirganj, District- Gaya at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
7. Mohan Prasad Sharma, son of Late Parmeshwar Mismishri, resident of Mohalla- Harsh Chandra Talab, P.S. Nawada, District- Nawada at present working at in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
8. Akhileshwar Singh, son of Sri Yogendra Singh, resident of Village- Kawra, P.S.- Jagdishpur, District- Bhojpur at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.
9. Lalo Prasad, Son of Late Rameshwar Singh, resident of Village- Kukihat, P.S.- Wazirganj, District- Gaya at present working in the office of Tilaiya Canal Division, Wazirganj in the District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Ware Resources, Government of Bihar.
2. The Principal Secretary, Department of Water Resources, Government of Bihar, Sinchai Bhavan, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Joint Secretary Department of Water Resources, Government of Bihar, Patna.
5. The Under Secretary, Department of Water Resources, Government of Bihar, Patna.



6. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Sinchai Bhavan, Patna.
7. The Chief Engineer, Department of Water Resources, Katari Jheel Road, Gaya, Bihar.
8. The Superintendent Engineer, Water Ways Circle, Nawada, District- Nawada.
9. The Executive Engineer, Tilaiya Canal Division, Wazirganj, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arup Kumar Chongdar
For the Respondent/s : Mr. Vikash Kumar-Sc11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 10-05-2018

The present writ petition has been filed for issuance of directions to the Respondents to treat the services of the petitioners with effect from October, 1999 to 16.09.2013 as temporary / regular on a notional basis for the purposes of grant of pension.

2. The brief facts of the case are that the Petitioner Nos. 1 to 3, 5 and 7 to 9 were appointed on daily wages in the year 1982 and similarly the Petitioner Nos. 4 and 6 were appointed on daily wages in the year 1979. According to the policy of the Government contained in Office Order No. 3455 dated 10.04.1990, it was decided to regularize the services of those daily wages employees, who had worked for more than 240 days. Since, no action was taken by the authorities, the petitioners had filed a writ petition bearing C.W.J.C. No. 6469 of 1998, which was disposed of by an order dated 12.10.1999 directing the Respondents to consider the case of the petitioners



for regular appointment within a period of six months. Since the petitioners were not being regularized, despite the orders of this Court, they had moved this Court by filing various writ petitions (batch of 59 cases) and this Hon'ble Court by a judgment dated 10.11.2006 passed in C.W.J.C. No. 6504 of 2000 and other analogous cases issued the following directions:-

“(1) The Chief Secretary, Government of Bihar shall constitute a Committee of three Secretaries within a period of two months from today to examine the manner and mode and the type of appointment and whether such appointments are in consonance with the Recruitment Rules on regular posts, irregularly made or illegally made or not.

(2) Such Committee shall consider the individual case after giving an opportunity of hearing to the affected employees, the procedure for which the Committee will evolve its own modality and modus operandi so as to reach to a conclusion as to the nature of the appointments of the employees covered in this group of petitions and to ascertain whether their appointments are regular, irregular or illegal and whether they are falling within the ambit of the observations made in paragraphs 45 and 53 of the decision in Secretary, State of Karnataka and others Vs. Uma Devi (3)(supra) case judgment.

(3) The Committee shall, undoubtedly, take a decision in the light of the law laid down by the Constitution Bench of the Hon'ble Apex Court in Secretary, State of Karnataka (Supra) and in particular in the light of the observations which are quoted herein above.

(4) It shall, also, be remembered that the exercise of regularization, if required, shall be a one time measure.

(5) The exercise by the Committee is directed to be completed within six weeks after the creation



thereof and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.

(6) The contention that in some of the cases out of the present group in earlier round of litigation finality has been attained and achieved shall, also, be examined by the Committee.

(7) Until the Committee concludes its process and exercise directed herein above, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained.”

3. Thereafter, the petitioners herein had represented their case before the High Level Committee, however, the case of the petitioners herein was rejected by the High Level Committee by an order dated 18.03.2009 and thereafter, the petitioners were also removed from their services which they were rendering on daily wages, by an order dated 29.04.2009. The said orders dated 18.03.2009 and 29.04.2009 were challenged by the petitioners before this Hon'ble Court in C.W.J.C. No. 7144 of 2009 and the learned Division Bench of this Court by a judgment dated 04.03.2010 disposed of the said writ petition and appointed One Man Committee comprising of Justice Uday Sinha to scrutinize the appointments of the daily wagers in light of Paragraph No. 53 of the decision rendered by the Hon'ble Apex Court in the case of ***Secretary, State of Karnataka and Others Vs. Uma Devi (3) and Others, reported in (2006) 4 SCC 1***. The said Committee was directed by this



Hon'ble Court to dispose of the matter by the end of June, 2010. Thereafter, the said One Man Committee had disposed of the case of the petitioners herein by an order dated 20.07.2011 with a direction to the Chief Engineer, Tilaiya Canal Division to fill up the regular vacant posts in a regular manner within six months, giving preference to employees working on daily wages. The said One Man Committee had also recorded the fact that the petitioners had been working on daily wages in the Tilaiya Canal Division for more than 20 years.

4. In compliance of the aforesaid orders passed by this Hon'ble Court as also by the One Man Committee, the District Selection Committee, Gaya, in its meeting held on 05.08.2013 decided to recommend the case of the petitioners herein for absorption / regularization. Thereafter, the respondents vide letter No. 2059 dated 17.12.2013 had regularized the services of the petitioners herein on various Class-IV posts, whereafter the petitioners had jointed their respective posts on different dates.

5. The learned counsel for the petitioners has submitted that the petitioners have been put under the category of new appointment and their past services have not been taken into account even since October, 1999 since when the petitioners



have been getting minimum time scale with all admissible benefits except increment (with DA), in view of the aforesaid order of this Court dated 12.10.1999 wherein this Court had directed that till the representation of the petitioners for regularization is decided, the authorities shall pay the petitioners at the lowest stage of time scale of pay as admissible to Class-IV posts along with the admissible allowance with effect from October 1999 till the regular appointment is made. It is further submitted that although the status of the petitioners from 1979/1982 to 11.10.1999 was that of a daily wager getting a definite rate of pay as fixed by the Government, however, the status of the petitioners from 12.10.1999 to 16.12.2013 is that of a regular / temporary employee getting a Minimum Time Scale hence, the same amounts to holding of a substantive post in a permanent establishment, as such, the petitioners are entitled to get the service benefits at least with effect from 12.10.1999.

6. Per contra, the learned counsel for the Respondents, referring to the counter affidavit has submitted that the order of appointment dated 17.12.2013 itself shows that the absorption / appointment of the petitioners is prospective in nature. Clause 9 of the said order dated 17.12.2013 shows that the petitioners



were appointed in terms of the Finance Departments' Resolution No. 2469 dated 16.11.2015 according to which the petitioners and other such employees have been placed under the new pension scheme which has come into effect from 01.09.2005. Thus, since the petitioners have been appointed after 01.09.2005, by way of absorption, they are entitled to get pensionary benefits under the said new pension scheme. It has further been submitted that it is a well settled law that the regularization/ absorption in service is a prospective action and the same cannot be given effect to retrospectively. It is equally a well settled law that the period of services rendered by an employee as a daily wager cannot be considered for the purposes of either regularization or grant of any benefits in the regular service on superannuation.

7. The learned counsel for the petitioner has referred to a judgment dated 01.12.2016 passed in C.W.J.C. No. 23218 of 2013 to contend that in the case of a similarly situated employee of Tilaiya Division, this Court had refrained from passing any order of regularization in service of the said writ petitioner on the ground that the regularization in service is a prospective action, hence, no benefit can be granted for the period, the incumbent has remained as a daily wager. This



aspect of the matter has also been dealt with by this Court in a judgment reported in **2013 (4) PLJR 762**.

8. I have heard the learned counsel for the parties and gone through the materials on record.

9. It is apparent that the petitioners herein had been admittedly regularized in the regular Establishment of the Government services only by an order dated 17.12.2013 and prior to that, they had remained daily wagers / irregular employees, hence, the petitioners herein cannot be granted the benefit of the services so rendered prior to the date of absorption / regularization i.e. 17.12.2013 especially, in view of the well settled law, as discussed hereinabove in the preceeding paragraphs to the effect that regularization / absorption is always prospective.

10. Thus, I find no merit in the present writ petition, hence the same is accordingly dismissed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.5.2019
Transmission Date	NA

