

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.233 of 2015

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Ramesh Chaudhary son of late Gangadhar Choudhary, resident of village Basauna,
Post Office Basauna, Police Station Bangaon, District Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary to Government null in the Public Health Engineering Department, Bisheshwaraiya Bhawan, Bailey Road, Patna
2. The Joint Secretary to the Government, null Public Health Engineering Department, Bisheshwaraiya Bhawan, Bailey Road, Patna
3. The Chief Engineer (Civil), Public Health Engineering Department, Bisheshwaraiya Bhawan, Bailey Road, Patna
4. The Superintending Engineer, Public Health Engineering Circle, Saharsa
5. The Executive Engineer, Public Health Engineering Division, Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate

For the Respondent/s : Mr. SC 1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 05-03-2018

Heard counsel for the petitioner and the respondents
State.

2. The petition has been filed challenging the memo no. 604 dated 10.07.2013 issued by the Public Health Engineering Department, Govt. of Bihar whereby petitioner's representation in compliance of the order dated 04.07.2011 passed in LPA No. 1368 of 2001 for reinstatement with consequential benefit has been rejected.

3. The admitted fact evident from the impugned order is that the petitioner was appointed for the first time on daily wages on 04.07.1987 and was disengaged on 17.03.1998. Against the same the petitioner had filed a writ petition bearing no. 8954 of 2000 which



was dismissed on 14.09.2001. Against the same he had filed LPA bearing No. 1368 of 2001 which was disposed off on 04.07.2011 granting liberty to the petitioner to make representation for appointment with consequential benefits. The same has finally been rejected by the impugned order relying upon the resolution dated 16.03.2006 bearing memo no. 639 issued by the Public Health Engineering Department Govt. of Bihar by assigning the reason that since the petitioner has not completed 240 days as a daily wage employee in each year for 5 years prior to 11.12.1990, his claim cannot be considered as he does not fulfill the requisite qualification under the said Resolution.

4. Counsel for the petitioner has placed reliance on two judgments passed in LPA No. 1690 of 2013 in the case of **Ashok Kumar Sharma &Ors vs. the State of Bihar & Ors.**, and in LPA No. 1365 of 2014 passed in the case of **Jai Kishun Ram & Ors vs. the State of Bihar & Ors.**, reported in **2016(1) PLJR 232** and **2016 (1) PLJR 512** respectively.

5. From the said two judgments, it is apparent that the issue stands settled regarding applicability of the provisions of the Resolution dated 16.03.2006 which has been relied upon by the authorities to reject the claim of the petitioner. The Division Bench has clearly held that the requirement of completing 240 days per year for five years continuously would apply only to those who have been



engaged on daily wages after 11.12.1990. In respect of others such as the petitioner who has admittedly been appointed on daily wages for the first time on 04.07.1987 i.e prior to 11.12.1990, the same would not at all be applicable. In this connection paragraph 7 of the judgment in the case of Ashok Kumar Sharma & Ors (supra) is being reproduced herein below :

“7. Having considered the matter, in our view, learned counsel for the appellants is correct. Considering the history of events up to 1990, as noted above, what was considered for regularization was a daily wager having worked for more than 240 days simplicitor, was the earlier State Government decision and which had been extended pursuant to trade union agreement. This was also in consonance with the resolution of the State Government in the Personnel Department dated 10.05.2005, which is a part of the proceedings itself. This clearly shows that right till the year 2005, State was only contemplating regularization with restriction that the said daily wager must have worked for 240 days. There was a clear distinction maintained when the 2006 resolution was taken. There were two classes. First, where the State Government was bound by the trade union agreement in respect of daily wagers up to 11.12.1990 and second those who came thereafter. Therefore, there were two different categorizations in this resolution dated 16.03.2006. It is wrong to say that there was conflict between the Clause-1 of the said resolution and Clause-3. The two contemplated two different periods. The writ petitioners/ appellants, falling within the first period i.e. till 11.12.1990, were rightly treated and regularized as per Annexure-6 to the writ petition with effect from 22.12.2006. This distinction was not brought out clearly before the learned Single Judge because of which the learned Single Judge applied Clause-3 of this resolution, which applied to only those people who had joined as daily wagers after 11.12.1990.”

6. In view of the aforesaid settled position, the reasons



assigned in the impugned order for rejecting the claim of the petitioner is not tenable and thus the impugned order is set aside.

7. The petitioner’s claim for appointment with consequential benefits in compliance of order dated 04.07.2011 passed in LPA No. 1368 of 2001 has therefore to be considered in light of the legal position as settled in the case of Ashok Kumar Sharma (supra), apart from other relevant considerations.

8. Petitioner’s counsel seeks liberty to place before the authorities, instances of others similarly situated who have been extended the benefit claimed by the petitioner. Let the petitioner do so within a period of two weeks along with a copy of this order so as to facilitate his consideration. The authorities would be obliged to take a final decision within eight weeks thereafter, in respect of the claim of the petitioner.

10. The writ petition is disposed off.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.03.2018
Transmission Date	

