

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17065 of 2007

1. Dina Nath Singh, son of Shri Deo Nandan Singh, Resident of village Sankharain, Post Office Hasaipur, P.S. Marhaura, Dist. Chhapra.
2. Anil Kumar Roy, sons of Shri Satya Narayan Roy, Resident of Village Narhan State, Post Office bibhutipur, P.S. Bibhutipur, Dist. Samastipur.
3. Brahmdeo Prasad, son of Shri Gulabchand Yadav, resident of Village Aliyachak, P.O. and P.S. Kako, Dist. Jehanabad.
4. Bhagwan Singh, sons of Shri Indreadeo Singh, resident of Village and Post Office Sakhara, P.S. Rajpur, Dist. Rohtas at Sasaram.
5. Kailsh Raut, sons of Shri Bhagelu Raut, Resident of Village and Post Office Tinalten, P.S. Kaliganj, Dist. Bettiah.
6. Sushil Kumar, Son of Shri Laxmi Roy, Resident of Village Basari, P.S. Gaighat, Dist. Muzaffarpur.
7. Pasupati Singh, son of Shri Kapildeo Singh, resident of Village and Post Office Saraion, P.S. Sonepur, Dist. Chhapra.
8. Indradeo Singh, son of Shri Harilal Singh, resident of Village Lakhibigha, P.O. Khagaul, P.S. Danapur, Dist. Patna.
9. Prahlad Ram, sons of Shri Rajendra Prasad, Resident of Village Gosaitola, P.O. Dilipchak, P.S. Danapur Cantt., Dist. Patna.
10. Lakhichand Das, son of Shri Ranilal Das, Residetn of Village Faradpura, P.O. Rampur, P.S. Naubatpur, Dist. Patna.
11. Ram Prasad Ram, son of Shri Rajballabh Ram, Resident of Village Pathar, P.O. Garhani, P.S. Charpokhari, Dist. Bhojpur.
12. Chalaki Roy, son of Shri Kapildeo Roy, resident of Village Balamichak, P.O. Anisabad, P.S. Gardanibagh, Dist. Patna.
13. Alakhnath Singh, son of Shri Ram Kewal Singh, Resident of Village Tetariyan, P.O. Dakshin Chakathan, P.S. Udwantnagar, Dist. Bhojpur at Arrah.
14. Gajadhar Ram, son of Shri Laldhari Ram, Resident of Village Ranipur, P.S. Phulwarisharif, Dist. Patna.
15. Anil Kumar Sinha, sons of Shri Amareshwar Prasad, Resident of Village and P.O. Indore, P.S. Itarhi, Dist. Buxar.
16. Raudi Paswan, sons of Shri Chhedi Paswan, resident of Village Babahara, P.O. Nakati, P.S. Rajnagar, Dist. Madhubani.
17. Dasrath Pal, sons of Shri Dwarika Pal, resident of Village Chatia Gopalpur, Dist. Begusarai.
18. Brij Lal Roy, son of Karu Bhagat, Resident of Village Ranipur, P.S. Phulwarisharif, Dist. Patna.
19. Awadhesh Singh, son of Shio Sharan Singh, Resident of Village Bahadurpur, P.S. Phulwarisharif, Dist. Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Forest and Environment Department, Government of Bihar, Sichai Bhawan, Patna.
2. The Deputy Secretary, Forest and Environment Department, Government of Bihar, Sichai Bhavan, Patna.
3. The Principal Chief Conservator of Forest, Bishwashwairaiya Bhavan, Bailey Road, Patna.
4. The Chief Conservator of Forest, Government of Bihar, Science & Technology Bhawan, Bailey Road, Patna.
5. The Director, Sanjai Gandhi Biological Park, Patna.



... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Mahasweta Chatterjee, Adv.
For the Respondent/s : Mr. Arun Kumar Bhagat, AC to AAG12

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 27-03-2018

Heard learned counsel for the parties.

In this case, nineteen petitioners have come before this Court for a direction to the respondents to regularize their services against the sanctioned vacant post in view of direction of this Court in C.W.J.C. No. 8356 of 1993 (Bachcha Singh & Ors. Vs. State of Bihar & Ors.) wherein the Court has given a direction to frame a scheme and regularize the services of daily wages employees.

The present petitioners were also party to the aforesaid C.W.J.C. No. 8356 of 1993 (Bachcha Singh & Ors. Vs. State of Bihar & Ors.). 71 daily wages employees including the petitioners had approached this Court in C.W.J.C. No. 8356 of 1993 with a prayer that they were working as a daily wager for a long period, they should be regularize in service, the same was disposed of vide order dated 1.9.1995 and this Court directed that (A) the respondents will prepare a scheme for regularization of the employees and those petitioners who have not already been regularized, (B) Such scheme be prepared within a period of four months from the date of receipt/production of a copy of this order. (C) Under the scheme so prepared the petitioners will be regularized in phased manner as and when the vacancy arise. The



respondent authorities are directed to follow strictly the seniority of the petitioners concerned. (D) Till regularization of the petitioners is completed, the status quo in respect of discharge of duty shall be maintained. (E) The above direction for the purpose of preparation of a scheme will be applicable to only those petitioners who are still working.

When the order was not implemented, the petitioners and others have filed contempt application being M.J.C. No. 2687 of 2005 (Bachcha Singh Vs. State of Bihar). The State has made a positive statement that the Government has created 8 posts as well as the Department has also prepared a detailed plan for creation of 80 posts and persons who were working as daily wagers would be regularized in service and all process will be completed in a period of five years budget plan and adjustment will be made accordingly and the Court, while disposing of the matter, has recorded that during the course of hearing of the writ application, the Opposite Party State of Bihar has fairly informed this Court the question of regularization of services of the petitioners as similarly placed employees are being considered and they will be regularized as and when the vacancy would arise. Having regard to the fair stand taken by the counsel for the State, this Court dispose of the writ application with a direction to the respondents to frame scheme and regularize the services. In the said order, it has also been recorded that there was no specific direction given to the



respondents for immediate at once regularize the services of the employees rather it has to be done in the phase manner and it has further been mentioned that from the show-cause, it is evident that the Opposite Parties have prepared a scheme, created eight new posts further as per direction of the court, all necessary steps have already been taken for creation of the post for regularization of the services of the petitioners in the phase manner and further recorded that the Secretary cum Commissioner in the Department of Forest and Environment, Government of Bihar in the affidavit has very categorically stated that the status quo order with regard to the petitioners was being maintained in the Biological Park and while disposing of the matter, the Court has said that before parting with the order, I am just observe that the rider put by the State Government for absorption against 8 posts should be removed so that some of the petitioners should be regularized immediately. The State Government and the officer including Secretary cum Commissioner, Department of Forest and Environment, Government of Bihar should endeavor to regularize all the petitioners either in the phase manner or at a time. It is further observed that in the meantime, the petitioners would not do any mischief with the opposite party or any officer concerned or indulge in the unlawful activity then the opposite party shall be at liberty to take action against the petitioner in accordance with law, whereafter, the State has filed review



application, Civil Review No. 75 of 2002 which was rejected and in this manner, the order passed by the Writ Court and the Contempt Court had attained finality. When the order was not implemented, the proceeding was again revived by filing a fresh M.J.C. No. 2380 of 2001 in which altogether six show-causes have been filed by the State. The case was taken up on 6.9.2006 (Annexure-6) and this Court passed the order on that date and directed the Commissioner and Secretary, Forest and Environment Department to file its show cause within a period of four weeks from the date of the order and make a clear-cut statement what steps were taken by the Department pursuant to the order passed by the Court on 1.9.1995 for framing of scheme for regularization as during course of submission, the opposite party nos. 3, 4, 5, 11 & 12 had made a categorical statement the petitioners were not surplus in the organization and their services were still required by the Sanjay Gandhi Biological Park and the case was directed to be placed after four weeks. Again the opposite parties has filed second show-cause where the statement has been made that in the light of the judgment of this Court, the services of the rest of the petitioners would be regularized as and when the vacancy will arise in the phase manner. The letter dated 9.7.2012 (Annexure-12) is a part of the supplementary affidavit of the petitioners wherein a category-wise vacancy has been made and it has been said that already 43 daily wagers have already been regularized and rest 27



daily wagers were yet to be regularized in service and in the last portion, the request was made by the Principal Chief Conservator of Forest, Bihar, Patna to the Secretary, Forest and Environment that the 25 daily wagers should be adjusted against the 18 new vacancies as a litigation was coming on for a long period and on their absorption, the dispute will come to an end. The matter was time to time adjourned and finally the contempt application has been disposed of vide order dated 12.9.2007 in which the Court has recorded as follows:- “I do not find this submission on behalf of the petitioner’s counsel has any substance because once the post was created, regularization was going to be made according to the seniority and others seniority should also be considered. I find that part of compliance and the direction of this Court has been complied by the opposite parties though after much delay and serious persuasion. The rest of the petitioners could not be regularized. Counsel for the petitioners submits that they should not be disturbed and should be allowed to continue as daily wagers as from the order, date 06.09.2006, of this Court, it is apparent that the opposite parties 3, 4, 5 and 11 have stated in their show cause that the petitioners are surplus in the organization and their services are still required for the Sanjay Gandhi Park. Now it is left for the opposite parties to consider their case. This proceeding is dropped.”



Learned counsel for the petitioners has submitted that they are claiming on the basis of statement made by the State that all the persons who were daily wagers will be regularized in service. 43 persons were regularized but, the rest of these persons have been left in lurch and further said that the work of these petitioners are needed in the Sanjay Gandhi Botanical Park and it is not so that the vacancies are not there and even if the vacancies are not there, they have been discharging the duty for long time. So the Government should create certain post for the purpose of their regularization.

The State has filed its counter affidavit and supplementary counter affidavit from where it appears that the Government has now taken a policy decision instead of regularizing the services, they have decided to take the work through engaging on contract basis and the Government is not now inclined to regularize the services of any daily wages employees. It appears Ramji Marandi and other similarly situated employees had approached this Court for identical relief of regularization in C.W.J.C. No. 81 of 2008 along with C.W.J.C. No. 7144 of 2009 and this Court referred the matter to Justice Uday Sinha, a One Man Committee, to examine the matter of Ramji Marandi and others and, accordingly, Justice Uday Sinha Committee has recorded that as these persons were not appointed against the vacant sanctioned post and refused to grant benefit to the Ramji Marandi and others and, accordingly, decided the matter in



favour of State. Against that order, the petitioners have approached this Court in C.W.J.C. No. 149 of 2013 and this Court has also refused to grant the relief of regularization.

Learned counsel for the petitioner submits that the case of Ramji Marandi is quite different to the present petitioners as in the case of Ramji Marandi, there was no undertaking given by the State for their regularization. So the case of these petitioners cannot be compared with the case of Ramji Marandi.

In the present case, it is a fact that the petitioners had approached this Court along with Bachcha Singh and others and, out of that lot, 43 persons have been regularized in service and still the petitioners are working and finally this Court has refused to proceed further and held that no contempt is made out and agreed with the view of the State that the petitioners were surpluses and they cannot be regularized in service. In such a situation, it cannot be said that the undertaking which was given by the State was completely ignored by them but, 43 persons under the scheme have been regularized and rest they have declared as a surplus and now they have decided to take the work through contract. In such a situation, it is very difficult for this Court to give a direction to the State to create the post and regularize the services of the petitioners but, it is also very much clear that if the Government in future frames a scheme or create some posts, then in that circumstances, the cases of the petitioners



should be considered and they should be regularized in service. As has been brought to the notice of this Court that in the proceeding of C.W.J.C. No. 8389 of 2008, wherein this Court has directed the State to frame and produce the scheme for the purposes of their regularization. The State must think over the matter that the petitioners have been working since long, if the vacancies are available and they have to appoint the person from the open market, in that event, the priority should be given to the present petitioners.

With the aforementioned observation and direction, this writ petition is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2018
Transmission Date	NA

