

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5425 of 2015

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1. Yogendra Rai. Son of Late Bhola Rai. Resident of village - Balbant Tola, Dost Nagar Sherpur, Maner, Police Station - Maner, District - Patna.
 2. Bijendra Ram. Son of Late Awdhesh Ram. Resident of village - Biayapur Tola Colony Maner, Police Station - Maner, District - Patna.
 3. Jai Kundal Pandey. Son of Late Thakur Das. Resident of village - Mathiapur, Police Station - Koilwar, District - Bhojpur.
 4. Upendra Nath Upadhayay. Son of Ram Jeevan Upadhayay. Resident of village - Ranipur, Police Station - Paliganj, District - Patna.
 5. Surendra Sah. Son of Late Laxmi Sah. Resident of Begharon Ka Ghar (House to homeless people), Mohalla - Saidpur, Police Station - Mahendru, District - Patna.
 6. Raj Kumar. Son of Deonath Singh. Resident of village - Ranabigha, Police Station - Barh, District - Patna.
 7. Yugal Kishore Prasad. Son of Ramdular Prasad. Resident of village - Pratappur, Police Station - Sandesh, District - Bhojpur at Ara.
 8. Bal Kishun Paswan. Son of Santoshi Paswan. Resident of Malahi Kali Asthan, Police Station - Barh, District - Patna.
 9. Bindeshwar paswan. Son of Late Munshi Paswan. Resident of Bari Kebai, Police Station - Sahjahanpur, District - Patna.
 10. Upendra Singh. Son of Munshi Singh. Resident of village - Basuhar, Police Station - Punpun, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General and Administrative Reforms Department, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Sub Divisional Officer, Danapur, Patna.
5. Om Prakash. Son of Late Mohan Ram. Resident of Zila Parishad Campus, Collectorate Staff Quarter, Patna.
6. Naresh Pandit. Son of late Taleshwar Pandit. Resident of village - Mahmadpur, Police Station - Bakhtiyarpur, District - Patna.
7. Md. Yunush Sah. Son of Mahmood Sah. Resident of Bazidpur, Qr. P-3, P.O. & P.S. - Barh, District - Patna.
8. Putu Ram. Son of Ramdhari Ram. Resident of Ambedkar Colony, Mahendru, Police Station - Sultanganj, District - Patna.
9. Shravan Kumar. Son of Ram Naresh Ram. Resident of PMCH Karamchari Quarter, P.O.- Bankipore, P.S.- Gandhi Maidan, District - Patna.
10. Naresh Kumar. Son of Hare Kishun Mahto. Resident of village - Bichli Malahi, Police Station - Barh, District - Patna.
11. Puna Prasad Bind. Son of Mohan Bind. Resident of village - Reshmal Barma Nagar, Rupashpur, Patna.
12. Rudal Mandal. Son of Late Patal mandal. Resident of village - Bharathi, Police Station - Simari, District - Darbhanga.
13. Mahesh Paswan. Son of Sitaram Paswan. Resident of village - Nawada (Lal Bagi), Mahmadpur, P.S. - Barh, District - Patna.
14. Pramod Kumar Sinha. Son of Late Beni Madho Prasad. Resident of Qr. No. LF-



- 03/248, Block-4, Bahadurpur Housing Colony, Bhuthnath Road, P.S.- Agamkuan, District - Patna.
15. Suresh Prasad. Son of Birhand Prasad Yadav. Resident of village & P.O. - Shahzehanpur, District - Patna.
16. Amarnath Prasad. Son of Late Chanarik Ram. Resident of village & P.O.- Kateshar, P.S.- Bihta, District - Patna.
17. Satish Kumar. Son of Shyam Narayan Mandal. Resident of village & P.O. & P.S.- Barh Kachehari, District - Patna.
18. Prushottam Kumar. Son of Shaligram Singh. Resident of village - Ranabigha, Police Station - Barh, District - Patna.
19. Most. Sheela Devi. Wife of Late Krishna Murari Chaudhary. Resident of Riding Road, Raja Bazar, Sheikhpura, P.O.- Veterinary College, P.S.- Shastri Nagar, District - Patna.
20. Madhu Prasad. Son of Late Balram Prasad. Resident of village - Kalyanpur, Police Station - Paliganj, District - Patna.
21. Ram Ranjan Kumar. Son of Girdhari Yadav. Resident of village - Sebanan Tola Raghunathpur, Police Station & District - Jehanabad.
22. Md. Salauddin. Son of Md. Nooruddin. Resident of Kamla-Nehru Nagar, Police Station - Kotwali, District - Patna.
23. Manoj Kumar. Son of Kuntu Prasad. Resident of village - Karorichak, P.S.- Phulwarisharif, District - Patna.
24. Sunil Kumar. Son of Late Deoki Singh. Resident of village - Chhatarpura-Sheonar, Police Station - Mokama, District - Patna.
25. Yogendra Dom. Son of Late Ramesh Dom. Resident of village - Aaropur, P.O.- Amarapura, District - Patna.
26. Pramod Kumar Singh. Son of late Shakal Singh. Resident of village & P.O.- Bankapuram, Police Station - Mahuddin nagar, District - Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Prakash

For the Respondent/s : Mr. GP6- PRASHANT PRATAP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-01-2018

Heard counsel for the petitioners and the respondents
State.

2. Petitioners who are the daily wage employees working
in the Patna Collectorate had approached this Court earlier when their
claim for regularization was pending.



3. This Court vide order dated 29.01.2013 passed in C.W.J.C. No. 1755 of 2013 had directed the authorities to examine the grievance and take appropriate decision within six months without expressing any merits on the claim of the petitioners. Pursuant thereto the order dated 10.05.2013 has been passed by the District Magistrate, Patna which is impugned in the instant writ petition.

4. The claim of the petitioners has been rejected by assigning reason that in the light of the departmental Resolution No. 639 dated 16.03.2006 and letter No. 1515 dated 19.03.2008, the petitioners do not fulfill the requisite qualification of having worked for 240 days in each year for five years prior to 11.12.1990 and as such the claim of the petitioners has been rejected.

5. Counsel for the State relying upon the said Resolution dated 16.03.2006 has placed before the Court Clause 3 of the said Resolution which is Annexure A to the counter affidavit filed by the State.

6. The same Clause 3 of the said Resolution has been interpreted by the Division Bench of this Court in the case of *Ashok Kumar Sharma vs. the State of Bihar* reported in **2016 (1) PLJR 232**, wherein regularization of the petitioners therein, who had earlier been regularized considering them fit on the ground of having completed 240 days of employment prior to the cut of date, had been withdrawn



applying the same interpretation of Clause 3 which has been applied in the case of the petitioners in the instant case for not fulfilling 240 days of work on daily wages in each year, for five years prior to 11.12.1990.

7. Counsel for the petitioners relies upon the said judgment to submit that Clause 3 which is being relied by the respondent authorities to reject the claim of the petitioners has been held as per the said order of the Division Bench to apply to those persons who were engaged after 11.12.1990 and were seeking regularization of their appointment. Reliance is being placed on paragraph nos. 7 and 8 of the said judgment which has been 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.

8. Having considered the matter, in our view, the impugned order, being Annexure-7 to the writ petition, recalling the regularization order dated 22.12.2006 (Annexure-6 to the writ petition), is set aside. The effect would be that the three writ petitioners/appellants would be deemed to be working duly regularized vide Annexure-6 to the writ petition. As their services are terminated by Annexure-7 dated 02.01.2013 and have not worked since then, upon their reinstatement, they would be deemed as regularized employees but they would not get any back wages. They would be reinstated within two months from today. They would also be entitled to continuity in service.”

8. Having considered the aforesaid submissions, this Court finds that in view of the Clause 3 of the said Resolution having been interpreted by the Division Bench of this Court to apply to those persons who were seeking regularization of their appointment as daily wager after 11.12.1990 and the distinction brought out in the said order of the Division Bench, the same would not apply to the instant petitioners who admittedly had worked as daily wagers for 240 days



till 11.12.1990. The rejection order therefore, has to be set aside.

9. On quashing of the impugned order dated 10.05.2013 bearing memo no. 1594, the matter is left to the District Magistrate respondent no. 3 to consider the claim of the petitioners in light of the interpretation of Clause 3 as per the said Division Bench judgment of this Court to the extent that it cannot be made applicable to reject the claim of the petitioners who have completed 240 days of employment on daily wages up to 11.12.1990. The consideration must be completed within a period of three months from the date of receipt/production of a copy of this order.

10. With the aforesaid observations and to the extent indicated herein above, the writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.01.2018
Transmission Date	

