

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19017 of 2008

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1. Munna Mandal, son of late Bhojan Mandal, resident of Village Purab-Sarai, P.S. Kotwali, District Munger
 2. Ashok Prasad Yadav alias Ashok Yadav, son of Subodh Yadav, resident of Lal Darbaja, P.S. Kotwali, District Munger
 3. Rajendra Prasad Yadav, son of Anandi Prasad Yadav, resident of Lal Darbaja, P.S. Kotwali, District Munger
 4. Ram Jatan Prasad Singh, son of Shiv Nandan Singh, resident of Village Bakapur, P.S. Kotwali, District Munger
 5. Raj Kumar Yadav, son of Gogendra Yadav, resident of Village Sherpur, P.S. Sherpur, District Munger

.... Petitioner/s

Versus

1. The Chief Secretary, Govt. of Bihar, Patna
2. Secretary, Department of Pollution and Forest Government of Bihar, Patna
3. The Secretary Personal and Administrative Department, Government of Bihar, Patna
4. Divisional Forest Officer, Forest Division Munger
5. Range Officer of Forest, Dharhara, Munger
6. Forest Conservator, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjjiv Sharan

Mr. Sanjay Kumar Mishra

For the State : Mr. Himanshu Kumar Akela, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-02-2018

It is unfortunate that a counter affidavit has been filed sworn by Sri Neeraj Narayan, son of Shri Lal Narayan Sharma, resident of Kankarbagh, P.S. Kankarbagh, District Patna wherein he has stated that petitioners were appointed in 1981/1984 and also payment of dues has been made. In paragraph 21 of the counter affidavit it has been stated that petitioners are working on daily wages workers as per availability of work. Due to paucity



of work and allotment of fund, the petitioners were not engaged from December, 2001 and the labourers are engaged as and when required. The statement made in this paragraph reflects that he has categorically made statement that petitioners were not working. When this Court has recorded in the order dated 9.1.2018 that after 2001, the petitioners are not being engaged as a Gardener whereas claim was made by the petitioners that though they have been working as a Gardener but they are not allowed to mark their attendance. Thereafter this Court has directed the State to produce the record about the persons having been engaged after 2001 for looking after the garden and also give details of persons to whom money are/is being paid. Equally petitioners are also directed to bring on record in contradiction of the statement of the State with corroborative material to reflect that still they are working as a Gardener and whereafter the same person has sworn the affidavit, has accepted that except petitioner no.1, Munna Mandal, who had worked from 2001 till April, 2002 which has been accepted by the learned counsel for the petitioners and in paragraph 4 of the supplementary counter affidavit names of rest persons have been mentioned who are working in Garden.

When this Court has asked that they are not being



regularized though they are taking work whereupon reply has come from the State that there is no permanent post of Gardener in Jai Prakash Udyan. It is an admitted fact that the petitioners have been working since long and work is available in the Garden then it is required, the State should create the permanent post for the Gardener and taking work of Gardener is not a seasonal matter, and kept them in daily wage is an exploitation of labour which is violative of Article 23 of the Constitution of India. The State is model employer and it is expected they should not act like private employer. If the private employer can be compelled to regularize the service worker, equally the State as a model employer will come under the purview and this Court directs that looking to the volume of the work the State must create permanent posts of Gardener in Jai Prakash Udyan and State should fill up the vacancies on need base basis and the case of the petitioners will also be considered in regularizing them in service.

Two affidavits which have been filed by the State has made contradictory statement. In first affidavit they stated that petitioners were not working but when this Court confronted and directed, then under compulsion, deponent has changed his stand. This Court is of the view that the action of the Officer is



unfortunate, the manner contradictory stand has been taken is of bad taste. The deponent should not embark upon such an act in future.

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

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.2.2018
Transmission Date	NA

