

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2292 of 2013

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1. MD. ZUBAIR AHMAD S/O MD. AKHTAR R/M AALAMGANJ (BANGALITOLA), P.O. GULJARBAG, P.S. AALLMGANJ, DISTRICT PATNA
 2. SULEMAN KHAN S/O LATE AZIZ KHAN R/V BHABUA , WARD NO. 22 (ZAMA MASZID), P.S. BHABUA, DISTRICT KAIMUR AT BHABUA
 3. MD. SHAKIR HUSSAIN S/O LATE BABIDEO R/V LAING, P.S. CHENARI, DISTRICT ROHTAS (SASARAM)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. COMMISSIONER CUM SECRETARY DEPARTMENT OF ROAD CONSTRUCTION, BIHAR PATNA
3. DEPUTY SECRETARY DEPARTMENT OF ROAD CONSTRUCTION , BIHAR PATNA
4. CHIEF ENGINEER DEPARTMENT OF ROAD CONSTRUCTION, BIHAR, PATNA
5. SUPERINTENDENT ENGINEER, BHOJPUR ROAD ANCHAL, ROAD CONSTRUCTION DEPARTMENT ARRAH
6. EXECUTIVE ENGINEER, ROAD CONSTRUCTION DEPARTMENT, DIVISION BHABUA (KAIMUR).
7. THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATIVE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tribhuwan Narayan, Advocate
For the Respondent/s	:	Mr. Yogendra Pd. Sinha, AAG-7
	:	Mr. Rajeev Kumar Sinha, A.C. to AAG-7

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 31.08.2012 by which Executive Engineer, Road Construction Department, Road Division, Bhabhua (respondent No. 6) has terminated the services of petitioners who were working as Road Roller Driver



as daily wager.

3. Briefly stated, the case of petitioners are that petitioner No. 1 Jabair Ahmad was working as Road Roller Driver since 01.03.1991 as daily wager under the Road Construction Department. Petitioner No. 2 was working as daily wager since 16.02.1994. Petitioner No. 3 Sakil Hussain was working since 14.11.1995. All were working under Work Charge Establishment as daily wager.

4. Petitioners were performing their duty and were getting their salary on month to month basis. However, their salary was suddenly stopped in September 1999 and petitioner filed C.W.J.C. No. 12713 of 2000 for payment of their salary and by order dated 07.12.2000 direction was issued by this Court for payment of salary within two months and same was paid. However, by order dated 19.06.2001 services of petitioners were terminated on the ground that they have been appointed after 1985 which was the cut-off-date.

5. Two employees who were also terminated for similar reasons had approached this Court by filing C.W.J.C. No. 2387 of 2002 challenging their order of termination and same was allowed by this Court by its order dated 21.04.2006 and appeal preferred by respondent-State being L.P.A. No. 653 of 2006 was



also dismissed and services of petitioner was restored.

6. Petitioners approached the authorities for reinstatement on the basis of parity and Deputy Secretary, Road Construction Department vide memo dated 11.11.2009 directed the Superintending Engineer, Bhojpur Road Anchal to grant similar relief to the petitioner as contained in Annexure-5 to this writ petition and pursuant to said direction petitioner were also reinstated and started performing their duty and were deputed from time to time as per need of work. Meanwhile one driver Babu Lal Ram retired on 31.01.2012 and petitioner No. 1 was given charge of jeep driver.

7. Thereafter vide memo dated 09.04.2010 recommendation was made to regularize the services of petitioner as they were working for last more than 18 years as contained in Annexure-8 of the petition.

8. On 06.01.2012 Joint Secretary of General Administrative Department issued direction to all the Secretaries and departments to regularize the services of daily wagers and remove those whose appointment was illegal and pursuant to said direction petitioners were removed from the service by the order impugned. Petitioners have been removed on the basis of one letter issued by State Government that daily wagers who



have been appointed after 11.12.1990 cannot be regularized and there is no direction in the said letter that employees who are working as daily wager has to be removed. The only direction in said letter has been issued that employees appointed on daily wages prior to 11.12.1990 their services are required to be regularized. There is no direction to terminate the services of employees, who are working as daily wager after 11.12.1990. The issue has been clarified by this Court in C.W.J.C. No. 12713 of 2000 as such removal of petitioners on the basis of said circular is not sustainable when their cases for regularization has been recommended and pending before the competent authority.

9. A counter affidavit has been filed on behalf of respondent Nos. 2 to 6 by the Executive Engineer, Road Construction Department, Bhabhua in which it has been stated that these three petitioners were not working as Driver in the capacity of work charge charge cadre. They were working as driver as daily wager. Petitioners have been appointed as daily wager after 11.12.1990 which is the cut-off-date fixed by the government and petitioners being appointed as daily wager subsequent to that date their services were terminated.

10. The issue regarding regularization of daily wagers was considered and decided in case in State of Karnataka Vs



Uma Devi in which procedure has been laid down to regularize the services of daily wagers who are in continuous service for last 10 years and pursuant to said judgment and order of Apex Court the State Government had constituted a committee to consider the cases of daily wagers, who are working for more than 10 years and their appointment even found irregular but not illegal are eligible to be regularized and in view of direction issued by Apex Court the case of petitioners who are working on daily wagers are required to be considered by the committee constituted by the State Government as a one time measure to regularize the services of such daily wager.

11. The writ petition is disposed of with a direction to respondent No. 4 to consider the case of petitioners for their regularization of service under regular establishment by the appropriate committee constituted for this purpose within three months from date of production/receipt of a copy of this order.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	12.02.2018
Uploading Date	18.06.2018
Transmission Date	N.A.

