

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12165 of 2017

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Shatrudhan Pandit, Son of Late Rago Pandit, Resident of Village- Bidhauli, Police Station & District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Sheikhpura.
4. The Deputy Collector, Nazarat/Establishment, District- Sheikhpura.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Manoj Kumar
Mr. Chandan Kumar

For the Respondent/s : Mr. RAJ KISHORE RAY, GP-18

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 08-03-2018

At the outset, the learned counsel for the petitioner seeks to correct the name of the petitioner which has been wrongly mentioned.

The learned counsel for the petitioner is permitted to make necessary correction during the course of the day.

The present writ petition has been filed, challenging the order of the Deputy Collector, Establishment, District-Sheikhpura whereby and whereunder it has been held that the case of the petitioner cannot be considered for appointment on the ground that in between the period 1986 to 1990, the petitioner has not worked for 240 days in each year.



The learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Division Bench of this Court reported in **2016(1) PLJR 232** (Ashok Kumar Sharma & ors. Vs. The State of Bihar through the Chief Secretary & ors.), paragraph nos. 6 and 7 thereof are reproduced hereinbelow:

"6. ... It is then pointed out and rightly so, in our view, the other category of daily wagers, who were to be considered for regularization, were those who were appointed after 11.12.1990 may be up to 2006. It is in respect of these that new stipulation in the resolution of 2006 was laid down that they would be required to complete 240 days per year for five (5) continuous years for their regularization. It is submitted by the appellants that they are in the first category and not in the second category. Considering that they, as the first category, had been regularized by the conscious decision of the State Government, without noticing or realizing the difference, the regularization order has been withdrawn putting them in the second category. It is submitted that the learned Single Judge did not appreciate those distinctions and this categorization. It is also pointed out that this dichotomy of two categorizations was noticed by the department and a clarification was sought for from the Personnel Department. The clarification was that all employees employed on daily wages would have to satisfy the condition of having worked for 240 days per year for five (5) continuous years. What was the reason for this singular condition was not explained.

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 simpliciter, 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 10.5.2005, 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."

It appears from the aforesaid judgment rendered by the Hon'ble Division Bench in the case of Ashok Kumar Sharma (supra) that the Deputy Collector, Establishment, Sheikhpura while passing the order dated 19.07.2014 has not considered the revised policy of the State Government as also the said judgment. Hence, it is imperative to quash the said order dated 19.07.2014 and remand the matter back to the Deputy Collector, Establishment, Sheikhpura, for further consideration.

Per contra, the learned counsel for the respondents has submitted that true it is that the aforesaid judgment rendered in the case of Ashok Kumar Sharma (supra) speaks of rendering a total number of 240 days collectively prior to the year 1990, but



subsequently the policy of the Government has changed.

In view of the aforesaid, I deem it fit and proper to quash the impugned order dated 19.07.2014 passed by the Deputy Collector (Establishment), Sheikhpura and remand the matter of the petitioner to the said authority for reconsideration in light of the judgment rendered by the Division Bench of this Court in the case of Ashok Kumar Sharma (supra) and other rules / regulations on the subject matter issued by the State Government from time to time.

It is expected that the final order shall be passed by the concerned authority within a period of eight weeks from today.

The writ petition is disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

