

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17453 of 2013

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Md Kamaluddin S/O Late Mahroom Resident Of Village - Khuththa (Khurpatti),
P.S. Belsand, District - Sheohar

.... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Road Construction Department, Patna
2. The Engineer - In - Chief, Road Construction Department, Government of Bihar, Patna
3. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur
4. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi
5. The Sub - Divisional Officer, Road Construction Department, Road Sub Division -II, Sursand, District - Sitamarhi
6. The Assistant Engineer, Road Construction Department, Road Sub Division, Sursand, District - Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Kripa Nand Jha, Advocate

For the State : Mr Amaresh Kumar Sinha, AC to GA I

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 08-05-2018

Heard learned counsel for the petitioner and the
respondent-State.

2 Petitioner's claim for regularization has been rejected by the respondents by the impugned order dated 11.05.2013 on the ground that in terms of Resolution No 639 dated 16.03.2006, the requirement is that petitioner should have worked 240 days for five years continuously. The State has rejected the petitioner's claim as it alleges that the petitioner has only worked for three years prior to the



cut off date which is 11.12.1990.

3 In light of the law laid down by the Division Bench of this Court in the case of *Ashok Kumar Sharma & Others –Versus- State of Bihar & Others* reported in 2016 (1) PLJR 232, the reasons assigned for rejecting the petitioner's claim is not sustainable. This Court would reproduce the legal position with reference to the Circular dated 16.03.2006 bearing No 639 as decided by the Division Bench of this Court in the said case which is as follows:

“6 Learned counsel for the appellants submits that the history of the action taken by the State Government, for regularization on daily wages employees, if taken into account, would show that there are two classes of employees. He first draws attention of this Court to the resolution of the State Government being resolution No. 5940 dated 18th June, 1993 in this regard. Here, it clearly mentions that the State Government had issued cut off date as 01.08.1985 that henceforth there would be no recruitment on daily wages after cut off date. Therefore, it was decided that regularization would be done only in respect of those daily wagers who had been employed for 240 days prior to 01.08.1985, but number of Government Employees Trade Union raised various demands, especially in view of the fact that notwithstanding the aforesaid restriction put by the State Government, due to exigency of work and non 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 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.”

4 In light of the legal position as declared by the Division Bench of this Court in the case of *Ashok Kumar Sharma & Others (supra)*, the petitioner is entitled to consideration of his case for regularization in terms of the provisions contained in the Resolution dated 16.03.2006 bearing Memo No 639 which has been interpreted, as above.

5 Let the respondents consider the petitioner's claim for regularization in light of the legal position noticed hereinabove. The office order dated 11.05.2013 bearing Memo No 881, which is impugned in the instant writ petition, will not stand in the way of the respondents to consider the case of the petitioner in accordance with law subject to fulfilling all other criteria.

6 This writ petition is disposed of accordingly.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2018
Transmission Date	NA

