

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1525 of 2016

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1. Geeta Devi Wife of Late Binod Paswan resident of Mohalla - Chitkohra, behind Purani Bhatti, P.O. Anisabad, P.S. Gardanibagh, District - Patna at Present Working on Daily Wages, Head of Department, Gynecology Department, Patna Medical College and Hospital, Patna
 2. Satyanarayan Rai Son of Late Kannu Rai resident of Mohalla - Chakaram, P.O. G.P.O., P.S. Buddha Colony, District - Patna and at Present Working on Daily Wages, office of Superintendent, Patna Medical College and Hospital, Patna
- Petitioners**

Versus

1. The State Of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Director - in - Chief, Health Department, Government of Bihar, Patna
4. The Superintendent, Patna Medical College and Hospital, Patna

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Akshdeep, Advocate and Mr. Shyameshwar Kumar Singh, Advocate
For the State	:	Mr. Dhurjati Kr. Prasad- GP 14

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 21-02-2019

Heard learned counsel for the petitioners as well as learned counsel for the State.

Petitioners no. 1 and 2 were engaged on daily wages in the years 1985 and 1987 respectively. Petitioner no.1 was working as Mahila Kakshpal, whereas petitioner no.2 was working on the post of Generator Operator. Services of the petitioners were terminated in the year 2001. After series of litigation their services were reinstated during pendency of the second writ petition filed by the writ petitioners bearing C.W.J.C.No. 17155 of 2009. This Court in the order dated 13.8.2012 disposing of the said writ



petition filed by the writ petitioners had been pleased to observe as follows:-

*“This attitude of the State baffles this Court inasmuch as in view of the order dated 26.06.2006 passed in L.P.A. No. 946 of 2003 the petitioners’ case ought to have been considered by the respondent-authority and also in view of the decision of the Constitutional Bench of the Apex Court in **Uma Devi (supra)** as well as subsequent decision in **State of Karnataka and others v. M.L. Kesari and others (AIR 2010 Supreme Court, 2587)** for regularisation.*

It does not appear from the averments made in the counter affidavit as well as the supplementary counter affidavit that the cases of the petitioners were ever considered for one time regularisation. It further appears that the order of reinstatement, passed during the pendency of this writ application, itself goes to show that the petitioners’ appointment cannot be termed as illegal one. (emphasis mine)

*In above view of the matter, this writ application is disposed of with a direction to the Director-in-Chief, Health Services, Government of Bihar, Patna, respondent no. 2, to consider the case of the petitioners for one time regularization in view of the decision of the Apex Court in **Uma Devi(supra)**.*

It is expected that the whole exercise would be completed within three months from the date of receipt/production of a certified copy of this order by the respondent no. 2”.

Resultant action taken pursuant to the order passed by the writ Court is what has brought the petitioners to the Court once again. Their claim for regularization has been rejected on two grounds. First ground is that their initial engagement was illegal in the sense that their engagement was not against sanctioned post. The second reason which has been assigned is that in terms of



resolution dated 16.3.2006 bearing no. 639 regarding regularization, petitioners did not qualify on account of being short of 240 days in every year for five years prior to the cut off date, i.e., 11.12.1990.

Second ground regarding petitioners' claim being barred by insufficient number of working days is duly unsustainable in view of the law declared by the Division Bench of this Court interpreting the Government resolution dated 16.3.2016. Judgment in the case of **Ashok Kumar Sharma Vs. The State of Bihar** reported in **2016(1) PLJR(HC) 232** is clear in this regard. Respondents are not to insist that employee claiming regularization should have 240 days in every year for five years prior to 11.12.1990. It is clear from the said judgment that the requirement is of 240 days in any one year. From the orders impugned it is apparent that in some years prior to 11.12.1990 petitioners admittedly have more than 240 days to their credit as daily wages. Objection on that score is therefore legally unsustainable in light of interpretation of the resolution dated 16.3.2016 taken note of herein above.

Other objection standing in way of petitioners' regularization is regarding their engagement on daily wages being illegal/not against the sanctioned post. In support of the said



reason Learned counsel for the State has referred to paragraph 34(b) of the Full Bench Judgement in the case of **Ram Sevak Yadav Vs. State of Bihar and others**, reported in **2013(1) PLJR 964**.

There is no dispute with the proposition laid down in the said judgment relied upon by the learned counsel for the State.

There is a clear finding of this Court in C.W.J.C.No. 17155 of 2009 to the extent that “petitioners appointment cannot be treated as illegal one”. Such findings having been recorded in the petitioners’ earlier writ petition this Court would observe that raising the same issue to defeat the claim of the petitioners is not permissible.

Respondents have not assailed the said findings recorded in C.W.J.C.No. 17155 of 2009, by filing any appeal against the same. Findings recorded in said judgment therefore becomes binding inter parties, and neither of the two parties can contend otherwise. In the circumstances, first objection regarding appointment of petitioners being illegal, is also unsustainable.

Two orders rejecting petitioners’ claim of regularization under orders dated 12.8.2014 and 20.9.2014 issued by the Director In chief, Health Services, Bihar in respect of petitioner number 1 & 2 respectively, are hereby quashed.



Case of the petitioners for regularization is to be considered without raising the issue of appointment being illegal as per the findings of the this Court in C.W.J.C.No. 17155 of 2009. Unless there is any other impediment in regularization of petitioners, their claim should be considered in light of findings recorded herein above by the respondent authorities expeditiously and preferably within three months from the date of receipt/production of a copy of this order.

Since in the counter affidavit respondents have admitted to sanction of the amounts for payment to the petitioners on account of services rendered by them as daily wages, this Court would observe that the admissible consequential benefits pursuant to the sanction dated 28.1.2019 may be made to them within the aforesaid period.

Writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2019
Transmission Date	NA

