

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10368 of 2014

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Shanti Devi wife of Sri Durga Mahato resident of village Barachatti PS and
PO Barachatti District Gaya presently residing at Janta Road PS Gardanibagh
Town and District Patna

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mahasweta Chatterjee
For the Respondent/s : Mr.SC11- Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-04-2019

Heard counsel for the petitioner and counsel for the
respondents.

Petitioner has filed writ petition praying for issuance of
a direction and quashing of order dated 25.03.2014 (annexure 8)
whereby the Director, SC & ST Welfare Department, Government
of Bihar, Patna (respondent no.2) has rejected petitioner's claim for
regularization which she has made pursuant to direction of this
court on her earlier writ petition arising out of CWJC
no.18742/2012.

This court would consider it proper to record the
circumstances leading to disposal of petitioner's earlier writ
petition. Having considered the pleadings on record, petitioner's
claim for regularization in earlier proceeding was left to be



substantiated by the petitioner with reference to relevant documents as per order dated 09.01.2014 in CWJC no.18742/2012 which reads as follows:

“Though the stand of the State is that her engagement was part time and she has been paid for the period of engagement but taking into consideration the fact that there are some annexures on record issued by the Department of Welfare recognizing her work under them at times is conflicting with the stand taken in the counter affidavit, there could be an occasion to consider the matter.

Writ application is disposed of with a direction upon the Principal Secretary, Department of SC and ST Welfare, Government of Bihar that on an application being filed with supporting material by the petitioner with a copy of this order, a decision with regard to the regularization of the petitioner as a one time measure would be duly considered and the outcome communicated to the petitioner within three months of filing of such an application”.

Pursuant thereto petitioner filed her representation dated 31.01.2014, placing reliance on the stand taken by the respondents in their counter affidavit filed in the earlier proceeding. She has not substantiated her claim with reference to any document showing her engagement prior to the cut off date. But has prayed for regularization claiming herself to be daily wage since 1990.



Counsel for the petitioner submits that in view of non-denial of petitioner's claim that she was working on daily wages basis since April, 1990, in the counter affidavit filed in earlier proceeding, it has to be presumed that she had been working since April, 1990. It is also submitted by counsel for the petitioner that as per annexure 3 i.e. decision of the State Government dated 06.01.2012 in the General Administrative Department, all those who are engaged in daily wages subsequent to cut off date 11.12.1990 were required to be disengaged. Petitioner has not been disengaged, in fact, petitioner has been continued as is evident from annexure 5 dated 03.04.2012. This, as per petitioner's counsel, is ample proof of the fact that the petitioner was engaged on daily wages prior to 11.12.1990. Other submission of counsel for the petitioner is that it is for the first time, in the impugned order respondents have taken stand that she was engaged in the year 1999.

Counsel for the State, on the other hand, submits that the petitioner can not be permitted to place reliance on the averments made in the counter affidavit in earlier writ proceeding to substantiate her claim that she had been working on daily wages since April, 1990. Counter affidavit filed in the earlier proceedings was considered by this court vide order dated 09.01.2014 as being



self-conflicting statement. Submission of counsel for the State to this extent is correct.

Stand of the respondents in the counter affidavit filed in earlier proceeding was not found to be worth consideration of this court. Therefore, opportunity was given to the petitioner to submit an application with supporting materials in respect of her claim of being engaged on daily wages prior to 11.12.1990. No supporting material has been placed by the petitioner in her representation filed pursuant thereto. Once again counsel for the petitioner, in the instant proceeding is making submission on the basis of counter affidavit filed in CWJC no. 18742/2012 which has already been held to be self conflicting statements by this court in the said proceedings. No document has been annexed to substantiate her claim of being a daily wager since April, 1990. In absence of any document/material in support of her said claim and on the basis of presumptions, this court would refuse to issue any direction for regularization of petitioner.

Emphasis of counsel for the petitioner on annexure 5 also does not support her stand. Bare perusal of annexure 5 shows that the same at best is proof of her engagement on part-time basis and not daily wages, that also for the period December, 2013 till February, 2014. It does not support the petitioner's claim that even



after issuance of annexure 3 dated 06.01.2012 she has been continued on daily wages.

This court in earlier order passed in instant proceeding dated 19.12.2016 had allowed the petitioner an opportunity of placing on record material to show that she has been working on daily wages prior to 11.12.1990 i.e. cut off date. Till date no such document has been placed on record.

For the reasons indicated hereinabove, writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	NA

