

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16866 of 2011

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1. Md.Ahmad S/O Md. Haphiz Mehtar Resident Of Village Masood Bigha, P.O. P.S. Bardh, District- Patna
 2. Randhir Kuamr Singh S/O Sri Bhuneshwar Prasad Singh Resident Of Village Mankaura, P.O. Mubarkpur, P.S. Bardh, District- Patna
 3. Satyendra Singh @ Satyendra Kumar S/O Late Rajendra Singh Resident Of Village Dwarika Bigha, P.O. Chora, P.S. Harnaut, District- Nalanda
 4. Ramesh Prasad S/O Sri Basudeo Prasad Resident Of Village Chandraura, P.O. P.S. Kako, District - Jehanabad

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and ORS
2. The Engineer-In-Chief Cum-Special Secretary Public Health Engineering Department, Bidhseshwariay Bhawan, Baily Road, Patna
3. The Chief Engineer Mechanical Public Health Engineering Department, Bisheshwariaya Bhawan, Baily Road, Patna
4. The Superintending Engineer, P.H.E. Circle, Patna Rajbanshi Nagar, Patna
5. The Executive Engineer, P.H.E. Division Patna East, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Lalan Kumar Singh
For the Respondent/s : Mr.Shashi Shekhar Kr Prasad, AC to AAG2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

10 16-09-2019 Heard counsel for the petitioners and counsel for the respondents-State.

Claim of the petitioners for reinstatement was considered in batch cases in the proceedings arising out of CWJC No.7359/2002. The same was disposed of by referring the claim of various petitioners to a three men committee. Three men committee was required to examine the claim having regard to law declared by the apex court in the case of



Secretary, State of Karnataka & ors v. Uma Devi & ors as also policy decision of the State Government under Resolution dated 639 dated 16.03.2006. On consideration by three men committee, petitioners' claim for regularization in terms of judgment passed in the petitioners' earlier writ proceedings bearing CWJC no. 7359/2002 had been rejected.

The rejection as per submissions of counsel for the State are on two grounds. Firstly, petitioners did not work 240 days as a daily wages employees in each year for five year prior to 11.12.1990 and secondly, claim of the petitioners for determining seniority for consideration of their claim was to be considered on the basis of their date of birth. Accordingly, the petitioners' claim were much below in priority and therefore they were not considered.

Both grounds raised by the State to sustain order of three men committee is unsustainable in the eye of law. The decision of Division Bench in the case of Ashok Kumar Sharma & others v. The State of Bihar & others reported in 2016(I) PLJR 232 and LPA no. 1365/2014 would clarify the issue. Para 7 clearly lays down that 240 days in every year for five years is not to be insisted upon. On that score, one reason for rejecting petitioners' claim is unsustainable.



As regards other reason this court would observe that petitioners' claim was to be considered based on date of entry in service. Reason assigned for non-consideration based on date of birth is unsustainable on account of order passed on petitioners' earlier writ proceedings in CWJC no. 7359/2002 and analogous cases wherein petitioners' CWJC no. 7359/2002 was also disposed of. Division Bench in earlier proceedings of the petitioners had recorded undertaking of State authorities that claim for regularization would be considered giving priority based on their entry on daily wages. The undertaking recorded in the Division Bench judgment is binding upon the parties.

In the circumstance, it is not open to the State authorities to adopt a different yard stick on the basis of date of birth. The order rejecting petitioners' claim for regularization therefore is not sustainable in the eye of law.

Respondents-authorities should consider petitioners' claim determining priority on basis of date of entry in service, against the existing vacancies and final decision in this respect be taken by the respondents-authorities. It would be open to the petitioners to place detail of individual claim of the petitioners with reference to the date of entry, and period of actual work discharged by them before the respondents-authorities. To



facilitate such consideration, in case petitioners are desirous of availing liberty, they would do so within eight weeks.

Respondents-authorities would be obliged to consider their claim in accordance with law having regard to the observations in the instant order within a period of three months thereafter.

Writ petition stands disposed of.

(Madhuresh Prasad, J)

s.hassan/-

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