

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24736 of 2013

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Yugal Kishore Upadhyay Son of Late Ram Prasad Upadhyay, resident of village and P.O. - Korawan, Via - Naubatpur, P.S. - Naubatpur, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Commissioner, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna
3. The Joint Secretary to the Government , Water Resources Department, Patna
4. The Chief Engineer, Water Resources Department, Anisabad, Patna
5. The Technical Secretary to the Chief Engineer, Water Resources Department, Patna
6. The Superintending Engineer, Design and Planning and Monitoring Circle, Anisabad, Patna
7. The Executive Engineer, Quality Control Division No. - 1, Anisabad, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Mishra
For the Respondent/s	:	Mr.Sunil Kr. Mandal, SC-3
		Mr. Bipin Kumar, AC to SC-3
		Mr. Ravi Ranjan Kumar, AC to SC 3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 10-04-2019

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

2. In this case, the petitioner is challenging the order, vide Memo No. 3509 dated 01.12.2010, passed by the Chief Engineer, Water Resources Department, Anisabad, Patna whereby and whereunder he refused to grant the relief of increment in the time scale on the ground that the petitioner out and out remained as daily wager and so he cannot claim parity with the petitioner of



C.W.J.C. No.11820 of 2004 (Rajendra Choudhary vs. State of Bihar) wherein it has been recorded that petitioners of that case were appointed as work charge establishment and later on they were reverted to daily wager.

3. During the course of discussion, the Court has asked the petitioner to show any law which shows that a daily wager will get the increment in the time scale whereupon he has drawn attention of this Court to the order passed in C.W.J.C. No.16046 of 2004 dated 08.09.2006 (Annexure-7), the portion which he has drawn attention, is submission of the counsel representing the case of the parties. The final view has been given in the second part, which is as follows:-

“In view of the statement made at bar this writ petition is disposed of with the direction that payment of all arrears and current salary in the scale of pay as was being given to the petitioners previously must be made within six weeks from today.”

4. The aforesaid order does not reflect the verdict of the Court that daily wager will also be granted increment in the time scale.

5. This Court has asked the petitioner whether he was regularised, whereupon he has tried to impress upon the Court, he had moved earlier before this Court in Division Bench in L.P.A.



No.274 of 1996 (Annexure-1) and in pursuance of direction passed in L.P.A. No. 274 of 1996, the order of the Division Bench remained affirmed and on that basis, he approached this Court in C.W.J.C. No.8487 of 1999 (Annexure-3) and this Court has directed which is as follows:-

“This Court taking into consideration the policy decision of the State and upto-date position of vacancy, which has been brought on record and are the documents of the State itself given by the respective Executive Engineers, directs the Respondent No.2 to look into this aspect of the matter and in view of the policy decision of the State and the vacancy which has been brought on record issue specific direction within a period of three months from the date of receipt/production of a copy of this order.

This writ application is allowed to the extent indicated above.”

6. The authorities have never regularised the service of the petitioner and now in view of the judgment passed in Uma Devi vs. State of Karnataka, reported in (2006) 4 SCC 1, it holds that a person, who entered into service in an illegal manner, cannot be granted regularisation in service and only in the case of irregular appointment if the Government servant has worked for 10 long years without any interference of the Court, in such circumstance, the authority will consider the issue of regularisation of the



Government servant by way of one time measure, but the fact in the present case appears that the engagement has not been done in terms of the Article 14 and 16 of the Constitution of India, inasmuch as the petitioner has already superannuated from service, now the question of his regularisation does not arise and as he all along remained as a daily wager, he will only be entitled to the lowest of time scale and cannot be granted increment in the pay scale.

7. The learned counsel for the petitioner submits that other similarly situated persons have been granted relief in the increment of time scale, but the law is very much clear that the principle of equality applies only in the legality, not in the illegality. There is no such law as on today entitled to the petitioner, who was the daily wager, would get the increment in the time scale.

8. This Court does not find any merit in the present application and the same is accordingly dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
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