

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 21500 of 2014**

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1. Sanjeev Kumar Pandey @ Sanjeev Pandey, son of Shri Ram Nand Pandey, at present resident of village - Sithi, Post Office - Gaunaha, P.S. Gaunaha, District - West Champaran, Permanent Address, R/o village - Mananpur, Post Office - Govind Ganj, P.S. Govind Ganj, District - East Champaran
  2. Durg Narayan Pabe @ Dudh Narayan Pave, son of Late Jagrup Pabe R/o Village and Post Office - Serava, Masjadwa, Police Station - Matiaria, District - West Champaran
  3. Rajeeva Kumar Pandey @ Rajeev Pandey at present R/o village - Sithi, Post Office - Gaunaha, Police Station - Gaunaha, District - West Champaran, Permanent Address resident of village - Manpur, P.O. Govindganj, P.S. Govindganj, District - East Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Walmiki Nagar
4. The Superintending Engineer, Tirhut Canal Circle, Raxaul
5. The Executive Engineer, Triveni Canal Division, Raxaul
6. The Sub-Divisional Officer, Triveni Canal Sub - Division, Maniyari
7. Shree Bhola Prasad, son of Shree Yadav Lal Sah, resident of Village – Shree Rampur, PO – Nonia Dih, Via – Raxaul, District – East Champaran

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | M/s Chakrapani, Prabhat Kr Munna, Advocates |
| For the S t a t e    | : | Mr Ashok Kr Pathak, AC to GP XXI            |
| For Respondent No 7  | : | Mr Jagjit Roshan, Advocate                  |

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**CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date : 28-01-2019**

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

2 The petitioners' claim for regularization was considered pursuant to their earlier round of litigation arising out



of *CWJC No 9021 of 2012*. Pursuant to the consideration, the Chief Engineer, Water Resources Department, Walmiki Nagar, Motihari, under his communication dated 26.04.2014, has rejected petitioners' claim for regularization. Reason, that has been assigned, is that in terms of Resolution No 639 dated 16.03.2006 of the Personnel and Administrative Reforms Department, petitioners did not fulfill the requirement of having completed 240 days work as a daily wager for five years prior to the cut off date 11.12.1990 fixed under the said Resolution. The same reason is supported by the counter affidavit. The learned counsel for the State has submitted that in view of falling short of the required number of working days for five years prior to cut off date, petitioners' were not entitled to consideration.

3 Learned counsel for the petitioners has brought to the notice of this Court interpretation of the said Resolution No 639 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 Division Bench has clearly held that there was no requirement of fulfilling 240 days in every year for five years and, as such, the reason assigned in the rejection dated 26.04.2014 in the case of the petitioners is incorrect and contrary



to the interpretation of Resolution No 639 by Division Bench of this Court in the case of *Ashok Kumar Sharma (supra)*.

4 This Court would consider appropriate to reproduce paragraph 7 of the judgment which reads as follows:

*“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 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.”*

5 In view of the aforesaid settled interpretation of Resolution No 639, this Court would observe that the respondents



cannot reject the petitioners' claim for not fulfilling 240 days for five years prior to the cut off date 11.12.1990 as has been done by the Chief Engineer in the impugned order dated 26.04.2014. Learned counsel for the petitioners has also submitted that applying the correct yardstick, which has been applied in the case of the petitioners, respondents have consciously considered the claim of Shri Durg Narayan Pave, the person who is at Serial No 3 in the same impugned order dated 26.04.2014, and regularized his services.

6 On going through the Letter dated 26.04.2014, this Court finds that Shri Durg Narayan Pave, also a claimant did not have 240 days in all five years and his work done for a lesser period, i.e. in four years, was considered. Apart from claiming parity with Shri Durg Narayan Pave, the petitioners' claim is otherwise also liable to be considered in terms of the interpretation of the Division Bench in the case of *Ashok Kumar Sharma (supra)*.

7 The respondents, therefore, would be obliged to consider the petitioners' claim in light of the interpretation of the Resolution No 639, as taken note of herein above without insisting on the requirement of 240 days in each year for five years prior to the cut off date, 11.12.1990 as petitioners are claimants under the



first category as they are daily wagers since prior to the cut off date, i e 11.12.1990.

**8** Let the consideration be done by the authorities within a period of six weeks from the date of receipt/production of a copy of this order.

**9** Writ petition is allowed.

**10** Impugned order dated 26.04.2014 and the consequential communication dated 26.06.2014 are quashed.

**(Madhuresh Prasad, J)**

**M.E.H./-**

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