

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.134 of 2019

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Mithilesh Kumar S/o Late Chandeshwar Prasad, Resident of Village- Alipur,
P.O. Kawa, P.S. Hilsa, District Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Personnel and Administrative Reforms Department,
Govt. of Bihar, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Nalanda at Biharshariff.
5. The District Magistrate cum- Chairman, District Selection Committee,
Nalanda at Biharshariff.
6. The Engineer-in- Chief, Rural Works Department, Bihar, Patna.
7. The Chief Engineer, Rural Works Department, Bihar, Patna.
8. The Superintending Engineer, Rural Works Department, Works Anchal
Nalanda at Biharshariff.
9. The Executive Engineer, Rural Works Department Works Division, Hilsa,
District Nalanda.
10. The Executive Engineer, Rural Works Department, Works Division,
Biharshariff, District Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar Mishra,Advocate.
For the Respondent/s	:	Mr.Md.N.H.Khan -SC-1
For the State	:	Mr. Md. Fazle Karim, AC to S.C.1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 05-09-2019 It is submitted by petitioner's counsel that the

petitioner has been working as a daily-wager since 01.11.1986

by virtue of such long service rendered as daily-wagers the

petitioner in terms of the Government resolution No. 69 dated

16.03.2006 is entitled to regularization of his services as

engagement on daily-wages was prior to cut off date 11.12.1990

fixed by the government under the said resolution.



The authorities have rejected his claim for regularization by assigning the reason that he did not fulfill 240 days of daily-wage service in every year for five years prior to the cut off date. The reasons assigned for rejection of the petitioner's claim contained in Annexure-7 dated 06.03.2018 is not sustainable in view of the law laid down by the division bench of this court in the case of *Ashok Kumar Sharma Vs. State of Bihar, reported in 2016(1) PLJR 232*.

In these circumstances this court directed the authorities to file a counter affidavit as to how they proposed to justify such reasons for rejecting the petitioner's claim as the same was contrary to the settled legal position in terms of the Judgment in the case of *Ashok Kumar Sharma (supra)*. In terms of the said judgment there was no requirement of having worked for 240 days in every year for the last five years prior to the cut off date. Requirement of 240 days was only in one year in the last five years before cut off dated 11.12.1990.

The counter affidavit which has been filed now has placed some facts which were not considered, while rejecting the petitioner's claim earlier. Authorities have said that the engagement of the petitioner on daily-wages was at a time when the petitioner was only 16 years and six months old. It is



also submitted that the petitioner acquired the qualification of matriculation in the year 1988. On consideration of these facts, petitioner's claim for regularization has been rejected by a fresh order dated 07.08.2019. The authorities would be obliged to consider the petitioner's claim for regularization afresh in accordance with law. Having regard to the law laid down in the case of *Ashok Kumar Sharma (supra)* without insisting on requirement of 240 days in all the five years prior to cut off date. It would be open to the authorities to exclude the services of the petitioner on daily-wages prior to attaining majority in May, 1988 for the purposes of consideration of his claim for regularization.

The writ petition is disposed of.

The authorities should take decision afresh in accordance with law by reasoned and speaking order expeditiously without any undue delay.

Let the decision be taken by the respondent no. 5 within three months from the receipt of the order.

(Madhuresh Prasad, J)

T.Kr./-Rahul
Mishra/-

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