

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20208 of 2019

=====

Rajesh Prasad @ Rajesh Kumar, S/o Late Raghunandan Prasad, Resident of
Village- Paharpura, P.S.- Bihar Sharif, Distt.- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Work Department,
Govt. of Bihar, Patna
2. The Principal Secretary, Personnel and Administrative Reforms Department,
Govt. of Bihar, Patna
3. The Divisional Commissioner, Patna
4. The District Magistrate, Nalanda at Biharsharif
5. The District Magistrate-cum-Chairman District Selection Committee,
Nalanda at Biharsharif
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 Biharsharif
9. The Executive Engineer, Rural Works Department, Works Division, Hilsa,
District- Nalanda
10. The Executive Engineer, Rural Works Department, Works Division,
Biharsharif, District- Nalanda

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Mishra
For the Respondent/s : Mr.Ajay (GA-5)

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 19-11-2019

Heard learned counsel for the parties.

2. The petitioner has put to challenge a decision of the Establishment-cum-Selection Committee headed by the District Magistrate, Nalanda dated 06.03.2018 whereby the claim of the petitioner of his absorption/ regularisation in service has been turned down. The petitioner claims that he was engaged on daily



wage basis on 01.03.1990 and continued to work till 30.06.1996. His case is based on a policy decision of the State Government contained in resolution No. 639 dated 06.03.2006 which contemplated of regularisation of the services of such employees who had worked for a period of at-least five years continuously with 240 days, in each of the years. The claim of the petitioner has been turned down mainly on the ground that he had not worked continuously for a period of five years before 11.12.1990, which was a condition precedent for grant of absorption/ regularisation under the guideline dated 16.03.2006.

3. Learned counsel appearing on behalf of the petitioner has relied on a Division Bench decision of this Court in case of ***Ashok Kumar Sharma & Ors. vs. The State of Bihar & Ors.*** reported in ***2016(1) PLJR 232*** wherein this Court had occasion to interpret the said letter dated 16.03.2006. Paragraph-7 of the said decision reads thus :-

“7. 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 the 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.”

4. He has submitted that the said decision of the Division Bench has been approved by the Supreme Court by order dated 23.02.2018, passed in SLP (C) No. 16777/2016.



5. Learned counsel for the petitioner has not been able to satisfy this Court that his initial engagement was in conformity with the provisions under Articles 14 and 16 of the Constitution of India, inasmuch as, no process of selection at all was adopted for his engagement on daily wage basis. Further, it is the own case of the petitioner that he is not working since 1996. Unless this Court directs his reinstatement, no relief can be granted to him. The petitioner has not been able to make out a case of his reinstatement after 22 years for the reason that he has not been able to establish any illegality in the act whereby the respondents had refused to take work from him since 1996. It has been categorically held by Supreme Court in case of ***H.P. Housing Board vs. Om Pal and others*** reported in (1997) 1 SCC 269 that persons, who are not in service, cannot be regularised. Paragraph-8 of the said decision is relevant for the present purpose and is being reproduced hereinbelow :-

“8. On a perusal of the impugned order dated 31-7-1995 it appears that the Tribunal has finally disposed of O.A. No. 43 of 1991 filed by the respondents and has given directions regarding regularisation of the said respondents without examining the legality of the termination of their services with effect from 1-12-1990. The question of regularisation of the respondents could arise only, if the termination of their



services with effect from 1-12-1990 was found to be invalid. The claim of the respondents in their application before the Tribunal that the termination of their services was illegal had been refuted by the Board in its reply. Without holding that the termination of the services of the respondents with effect from 1-12-1990 was invalid and that the respondents continued in service, the Tribunal was in error in giving directions regarding their regularisation and payment of enhanced wages to the respondents with effect from 1-1-1994 as per the judgment of this Court in Mool Raj Upadhyaya (supra). The impugned judgment dated 31-7-1995 and the order dated 17-11-1995 cannot, therefore, be upheld and have to be set aside and O.A. No. 43 of 1991 has to be remitted to the Tribunal for consideration of the question regarding validity of the termination of the services of the respondents with effect from 1-12-1990.

6. Considering the law laid down by the Supreme Court in case of **Om Pal** (supra), I am of the considered view that unless retrenchment of the petitioner in 1996 is held to be illegal and a case is made out for reinstatement of an employee, his case for regularisation cannot be considered on the ground that he had worked as daily wage employee for any period of time, as being claimed by him.



7. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA

