

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20326 of 2019

1. Saifan Khatun wife of Md. Basie, resident of Beldartoli, P.S. Sultanganj, P.O. Mahendru, District Patna.
2. Ramprit Thakur, son of Late Saryug Thakur, resident of Village Garain, P.O. Govindpur, P.S. Mansour Chak, District- Begusarai.
3. Ajay Kumar, son of Kanhai Ram, resident of Servant Quarter P.M.C.H, Quarter No. 48 P.O. and P.S. Patna.
4. Deelip Kumar, Son of Late Mahendea Ram, resident of B Block , Room No. 4, Employee's Quarters, P.O. G.P.O. P.S. Peerbahor, District Patna.
5. Bindu Kumar, wife of Late Binod Kumar, resident of P.M.C.H., B-Block, Quarter No. 60, P.O. Bankipur, P.S. Pirbahor, District- Patna.
6. Ram Kumar, son of Late Indu Ram, Resident of Alamganj, Nwanibagh, P.O. Guljarbagh, P.S. Alamganj, District Patna.
7. Daulatia Devi, wife of Chhatu Ram, resident of A - Block, Quarter No. 44, PMCH, P.O. bankipur, P.s. Pirbahor, District Patna.
8. Urmila Devi, wife of Late Deena Ram, resident of PMCH, A- Block, P.O. Bankipur, P.s. Pirbahor, District Patna.
9. Parwati Devi, wife of Late Vishwanath Rajak, resident of Budh Vihar, Bhuthnath Road, P.O. Bahadurpur Housing Colony, P.s. Agamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. Secretary, Health Government of Bihar, Old Secretariat, Patna.
4. Director Indira Gandhi Institute of Cardiology, P.M.C.H. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Verma, Mr. Jai Vardhan Narayan
For the Respondent/s	:	Mr. S.D. Yadav (AAG-IX) Mr. Nagendra Kumar, AC to AAG-IX

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 21-11-2019

Heard learned counsel for the parties.

2. The petitioners seek direction to the respondent,



Director, Indira Gandhi Institute of Cardiology (IGIC), P.M.C.H. Patna to regularize their services, who have been working in the aforesaid Institute against various Class-IV posts on daily wage basis.

3. It is admitted by the petitioners themselves that they had not worked on daily wage basis after 2004 and no work has been taken from them after 2004. According to their own case, thus, the petitioners are not presently working on daily wage basis. Unless this Court directs their reinstatement, no relief can be granted to them. The petitioners have not been able to make out a case of their reinstatement after 2004 for the reason that they have not been able to establish any illegality in the act whereby the respondents had refused to take work from them since 2004. It has been categorically held by the 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 regularized. 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 31.07.1995, it appears that the Tribunal has finally disposed of O.A. No. 43 of 1991 filed by the respondents and has given directions regarding



regularization of the said respondents without examining the legality of the termination of their services with effect from 1.12.1990. The question of regularization 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 refused 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 regularization 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.”



4. 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 petitioners in 2004 is held to be illegal and a case is made out for reinstatement of an employee, their case for regularization cannot be considered on the ground that they had worked as daily wage employees for any period of time, as being claimed by them.

5. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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