

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 212 of 2004

1. Ram Krishna Jha Son of Late Kunjan Jha, Resident of village, P.O. - Raghampur (Bilash) via - Rampatti, P.S. Raj Nagar, District - Madhubani.
2. Chandra Narayan Jha, Son of Bageshwar Jha, of village -Singiyaun, P.O. - Rampatti, P.S. Raj Nagar, District - Madhubani.
3. Sri Bahadur Kamat, son of Sri Nawal Kishore Kamat, Village + P.O. - Jaideo Patti, P.S. - Ghanshyampur, via Kurmo Nadiyami, District - Darbhanga.
4. Lalit Ram Mandal Son of Kisun Mandal, Village + P.O.- Sabour, P.S. - Sabour, District - Bhagalpur.
5. Sri Ramjit Singh Son of Ram Chhabila Singh, Village - Basavan Rai Tola, P.O. - Jitaura, P.S.- Piaro, District – Bhojpur.
6. Sri Jagranath Mishra Son of Late Rameshwar Mishra, Village + P.O.- Pokhar Bhinda, P.S. - Sakatpur, District - Darbhanga.
7. Rabindra Kumar Thakur, Son of Late Jaldhar Thakur, At. Shivpuri Colony Ishakchak, P.S.- Ishakchak, District – Bhagalpur.
8. Binod Kumar Singh Son of Late Harilal Singh, Village + P.O. and P.S. Dharhara, District - Munger.
9. Rajrishi Tiwary son of Sri Ram Lochan Tiwary, Village - Aakopur Purab Tola, P.O.- Bindsar Hamid, District - Siwan.
10. Md. Rizwan, Son of Md. Islam, Mohalla - Mustafapur, P.O. and P.S. - Barai, District - Bhagalpur.
11. Subodh Prasad Poddar, Son of Sri Jagdish Prasad Poddar, Mohalla -Ishakchak (Utri Tola) P.O. and P.S. - Ishakchak, District - Bhagalpur.
12. Arun Kumar Thakur Son of Krishna Kant Thakur, Village + P.O. -Chhachha Via- Raiyam Chini Mill, District -Darbhanga.
13. Kaushal Kishore Chaudhary Son of Late Jaideo Chaudhary, Village + P.O. - Telghi Distt.- Bhagalpur.
14. Bhim Prasad Yadav Son of Late Jagdish Yadav, Village-Gopalpur, P.O. - Bahadurpur, P.S.- Zero Mile, District – Bhagalpur.
15. Md. Iqbal Khan Son of Late Abdul Bahaw Khan, Mohalla + P.O. and P.S. - Tikka Manjhi, Distt.- Bhagalpur.
16. Dinesh Thakur Son of Sunder Thakur, Village - Jalalpur, P.O. & P.S.- Dhanarua, District - Patna.
17. Surendra Prasad Singh Son of Harkhu Prasad Yadav, Village – Satbhaiya, PO-Kharna, Distt.-Banka.
18. Agre Nand Singh Son of Late Yugal Singh, Village + P.O. - Khopira, Via - Kashap, District - Bhojpur.
19. Basant Kumar Srivastava Son of Late Badri Narayan Prasad, resident of village - Puweri, P.O. - Kawalpura, Via - Mashrakh, District - Chapra (Saran).

... .. Petitioner/s



Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. Secretary, Department of Minor Irrigation, Govt. of Bihar, New Secretariat, Patna.
3. Chief Engineer, Minor Irrigation Department, Bhagalpur.
4. Joint Secretary, Department of Minor Irrigation, Govt. of Bihar, Patna.
5. Superintending Engineer, Minor Irrigation Circle Bhagalpur.
6. Executive Engineer, Minor Irrigation Division, Bhagalpur.
7. Deputy Secretary Budget, Minor Irrigation Department, Government of Bihar, New Secretariat, Patna.
8. Additional Secretary, Minor Irrigation Division, Bhagalpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10305 of 2003

1. Rajo Singh son of Late Basudev Singh, resident of village + P.O.- Chishtipur, Police Station Chandi, District - Nalanda, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Munger (Sadar).
2. Bhisham Kumar Son of Shri Satyanarayan Mandal, resident of village + P.O. - Sabour, District - Bhagalpur, present Address At - Betvan Bazar, P.O. + District - Munger, at present working as Work Charge Choukidar, Minor Irrigation Subdivision, Munger (Sadar).
3. Arbind Kumar Sinha Son of Late Ramchandra Prasad, Village - Visphi, P.O. - Nikaspur, Police Station - Tajpur, District Samastipur, presently working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Munger (Sadar.)
4. Sri Basu Bhagat son of Late Chhanguri Bhagat, Village Ghor Pitiya, Tola - Hariram_ Purdih, P.O. - Sahjadpur, Police Station - Sahkund, District - Bhagalpur, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Munger, Sadar.
5. Sri Umesh Prasad Son of Late Suraj Garai, Village + P.O.- Keoor, P.S. - Hulasganj, District-Jehanabad, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Munger Sadar.
6. Sri Sunil Kumar Son of Late Surajnandan Prasad, Mohalla - Ramdhanpur (Gabda par) Pipalgali, P.O. District - Gaya. at present working as Work Charge Chowkidar, Minor Irrigation Subdivision (Boaring) Munger.
7. Sri Umesh Dutta Ojha Son of Sri Lahn Ojha, Village + P.O. - Kharhadanr. District - Buxar, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision (Boaring) Munger.
8. Sri Puran Yadav Son of Late Dhaturi Yadav, Village - Laldarwaza, P.O./ District - Munger, at present working as Work Charge Choukidar, Minor Irrigation Subdivision, Munger (Sadar).
9. Sri Rajniti Singh son of Sri Chhedam Singh, Village / P.O. - Shivkund, Police Station - Dharahara, District- Lakhisarai, at present working as Work



Charge Pump Assistant, Minor Irrigation Subdivision - Lakhisarai.

10. Sri Anil Kumar Singh Son of Sri Harihar Prasad Singh, Village - Ghosaith, P.O. - Piri Bazar, District - Lakhisarai, at present working as Work Charge Chowkidar, Minor Irrigation Sub-Division, Lakhisarai.
11. Sri Mritunjay Singh Son of Late Basudev Singh, Village -Sitakund Dih, P.O.-Dariyapur, Police Station - Muffasil, District- Munger, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Munger (Sadar).
12. Sri Rajeshwar Prasad Son of Late Suresh Prasad Yadav, Village - Abhiyora, P.O. - Bhadaula, Police Station - Kudra, District – Bhabhua (Kaimur), at present as working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Munger (Sadar).
13. Sri Premchanda Sah Son of Late Kanhai Lal Sah, Village - Babhangama, P.O. - Benigir, Police Station - Muffasil, District-Munger, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Munger (Sadar).
14. Sri Shyamdeo Pathak Son of Late Madhusudan Pathak, Village -Pharda, Police Station - Ramnagar, District-Munger. at present working as Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
15. Sri Om Prakash Ram Son of Late Ramchandra Ram, Village - Gaushala Road (Gosai Tola) P.O. + District - Lakhisarai, at present working as Work Charge Khalashi, Minor Irrigation Subdivision (Boaring) Munger.
16. Sri Janardan Pandit Son of Sri Baleshwar Pandit, Village - Kurant, P.O. + P.S.- Sabour. District - Bhagalpur, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Munger (Sadar).
17. Sri Raghunandan Singh Son of Sri Surendra Singh, Village + P.O. + P.S. + Dharahara. District - Munger, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
18. Sri Krishnakant Jha Son of Sri Abhaykant Jha, Village + P.O. - Shankarpur, District - Munger, at present working as Work Charge Work - Inspector, Minor Irrigation Subdivision, Munger (Sadar).
19. Sri Shankar Pathak Son of Late Madan Pathak, Village + P.O. -Shankarpur, Munger, at present working as Work Charge Chowkidar, Minor Irrigation, Subdivision, Lakhisarai.
20. Sri Sachchidanand Singh Son of Late Sitaram Singh, Village + P.O. - Dharahara. District- Munger, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
21. Sri Jaikant Prasad Yadav Son of Late Jharilal Yadav, Village + P.O.- Malar. District- Munger, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
22. Sri Parmeshwar Singh Son of Sri Sita Singh, Village -Bhushra ka Tola, Biran Bigha, P.O. - Kobra, P.S. + District- Arban, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
23. Sri Nagendra Paswan, Son of Sri Bhakku Paswan, Village -Soh Solempur, P.O. + P.S.- Sohsarai, District- Nalanda, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.



24. Sri Rameshwar Sah, Son of Late Ram Bachan Sah, Village - Kharaw Khurd, P.S. - Sahar, P.O.- Aandhari, Disrict - Bhojpur, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
25. Sri Kaushal Kumar Sinha, Son of Late Kameshwar Prasad Verma, Village + P.O. - Agwanpur, P.S.- Barh (R.S.P District- Patna, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Lakhisarai.
26. Sri Bimaleshchandra Shriwastav Son of Late Nageshwar Lal, Village - Garhi Bisunpur, P.O. - Kiul, District- Lakhisarai, at present working as Work Charge Work Inspector, Minor Irrigation Subdivision, Lakhisarai.
27. Sri Niranjan Prasad Sharma Son of Late Nawal Kishore Kunwar, Village + P.O. - Auta, P.S. - Hathidah, District Patna, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
28. Sri Pradip Kumar Son of Late Mangani Mandal, Village / P.O. - Pacham, P.S.- Chanan, District- Lakhisarai, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
29. Sri Paltan Yadav Son of Late Bikau Yadav, Village + P.O.- Belkhara, P.S.- Karpi, District- Arbal, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Lakhisarai.
30. Sri Yogendra Prasad Singh Son of Late Babulal Singh, Village – Saraiya, P.O. - Maranchi, P.S.- Punpun. District- Patna, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
31. Sri Prakash Chandra Jha, Son of Late Kalikant Jha, Village + P.O. - Raghobpur Balat, P.S.- Rajnagar, District- Madhubani, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
32. Sri Ramprit Singh Son of Sri Niranjan Singh, Village - Natthupur, P.O. - Sultanpur, P.S.- Fathua, District- Patna, at present working as Work Charge Choukidar, Minor Irrigation Subdivision, Lakhisarai.
33. Sri Vinod Kumar Singh Son of Late Mathura Prasad Singh, Village - Davilgarh, P.O. Davil, District- Jamui, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
34. Sri Shambhu Bhagat, Son of Late Sito Bhagat, Village - Dharm Rai Chak, Ward No. 05, P.O./District- Lakhisarai, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
35. Sri Ramkripal Sharma Son of Late Ramdeo Sharma, Village - Chakhan, P.O.- Samkoria, District- Saran, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
36. Sri Tarakant Thakur Son of Late Chakradhar Jha, Village - Amba Goya, P.O.-Ramchuan, District- Banka, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
37. Sri Sanjay Kumar Son of Late Raghubanshi Verma, Village - Prithivipur, Gajadhar Gali, P.O. - Chiraiya Tanr, Patna -1, P.S.- Kankarbagh, District- Patna, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Lakhisarai.
38. Sri Bibhishan Singh Son of Late Rajeshwar Singh, Village/P.O. - Babhangama, P.S. + District- Lakhisarai, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.



39. Sri Umesh Prasad Son of Sri Rajendra Ram, Village + P.O. - Raipur Koyelbigha, P.S.- Tharthari, District-Nalanda, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Lakhisarai.
40. Sri Vijay Prasad Yadav Son of Late Chandar Yadav, Village - Mohanpur, P.O. Ramchandrapur, P.S.- Piparia, District- Lakhisarai, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
41. Sri Achyuta Nand Singh Son of Late Yugal Singh, Village -Salaona Chak, P.O. - Rehua, P.S. and District - Lakhisarai, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Lakhisarai.
42. Sri Shatrughan Prasad Singh Son of Late Chandrashekhar Singh, Village - Sisma, P.O. -Mahsaurha, Via-Serari, District- Lakhisarai, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Lakhisarai.
43. Sri Mundrika Singh Son of Late Bishundeo Singh, Village + P.O. and P.S.- Karande, District- Sheikhpura, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Lakhisarai.
44. Sri Dinesh Singh Son of Late Ambika Singh, Village + P.O. + P.S.-Barahiya, District- Lakhisarai, at present working as Work Charge Pump Chalak, Minor Irrigation Subdivision, Lakhisarai.
45. Sri Awadhesh Kumar Sinha, Son of Late Kishun Prasad, Village - Garo Bigha, P.O. - Dhanwan, P.S.- Hisua. District- Nawada, at present working as Work Charge Chowkidar, Minor Irrigation Subdivision, Sheikhpura.
46. Sri Sadan Mishra, Son of Late Deonarayan Mishra, Village / P.O. +P.S.- Sabour, District- Bhagalpur, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Sheikhpura.
47. Sri Ramdeo Pandey Son of Late Raghunandan Pandey, Village - P.O. - Utar Sherthu, P.S.- Kako, District- Jehanabad, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Sheikhpura.
48. Sri Krishna Nandan Jha Son of Late Kapileshwar Jha, Village/P.O. - Lai, P.S.-Surajgarha, District- Lakhisarai, at present working as Work Charge Pump Sahayak, Minor Irrigation Subdivision, Lakhisarai.
49. Sri Indradeo Singh Son of Late Shiv Nandan Singh, Village - Chak Bihari, P.O. -Nandlalbad, P.S.- Gouri Chak, District-Patna, at present working as Work Charge Amin, Minor Irrigation Subdivision, Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Commissioner-cum-Secretary, Minor Irrigation Department, Government of Bihar, New Secretariat, Patna.
3. The Commissioner-cum-Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Old Secretariat, Patna.
4. The Commissioner-cum-Secretary, Finance Department Government of Bihar, Old Secretariat, Patna.
5. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Bhagalpur.



6. The Superintending Engineer, Minor Irrigation Department, Bhagalpur, Circle, Bhagalpur.
7. The Executive Engineer, Minor Irrigation Department, Government of Bihar, Munger Division, Munger.
8. The Deputy Secretary Establishment to the Government, Minor Irrigation Department, Government of Bihar, New Secretariat, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 212 of 2004)

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate with
Mr. Lalan Kumar Singh and
Mr. Sachin Kumar, Advocates

For the Respondent/s : Mr. Anjani Kumar, A.A.G. 4 with
Mr. Shailendra Kumar Singh, AC to AAG 4 and
Mr. Rajeshwar Singh, G.A. 10

(In Civil Writ Jurisdiction Case No. 10305 of 2003)

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate with
Mr. Lalan Kumar Singh and
Mr. Sachin Kumar, Advocates

For the Respondent/s : Mr. Anjani Kumar, A.A.G. 4 with
Mr. Shailendra Kumar Singh, AC to AAG 4

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date :18-06-2020

Heard both sides.

2. With the consent of parties, both the cases are being heard together as in both the cases identical issue has been raised and, as such, they are being disposed of by a common order.

3. For convenience, the fact mentioned in the case of Rajo Singh and others vs. State of Bihar, C.W.J.C. No. 10305 of 2003 (herein after mentioned as “Rajo Singh case”) would be taken into



consideration. The Court will also take into consideration the fact mentioned in the case of Ram Krishna Jha and others vs. State of Bihar, C.W.J.C. No. 212 of 2004 (herein after mentioned as “Ram Krishna Jha case”), as and when required.

4. This Full Bench has been constituted on account of difference of opinion having arisen in two cases, recorded in order dated 13/10/2006 passed in C.W.J.C. No. 10305 of 2003 i.e. in the Rajo Singh case, wherein two views on regularisation have been referred to, one expounded in the judgment passed in C.W.J.C. No.6212 of 1999 in the case of Uma Shankar Rai and others vs. State of Bihar, which has been approved by a Division Bench of this Court vide judgment dated 10.1.2001, passed in L.P.A. No.1573 of 2000, (State of Bihar vs. Uma Shankar Rai) and the other view explicated in the judgment and order dated 29.4.2005, passed by the Division Bench in L.P.A. No. 1136 of 2004, arising out of C.W.J.C. No. 146 of 1999 (Sapan Kumar Das vs. State of Bihar).

5. The Ld. counsel for both the parties have argued on facts as well as on law and moreover there is no specific point of reference, as such this Full Bench deems it fit & proper to advert to the facts and issue of law involved in the present case and finally adjudicate not only the question of law involved in the



present batch of cases but also finally decide both the cases on merits instead of again remanding the matter back to the Single Judge.

6. In L.P.A. No. 1573 of 2000 (Uma Shankar Rai case), the Division Bench has approved the view of learned Single Judge on the issue of entitlement of regularisation from work charge establishment in regular establishment, which had interfered with the order of cancellation of regular appointment dated 02.09.1999, having held that in terms of 1949 Rule as follows:-

“a post in work charge establishment of permanent nature required for 12 months in the year, long and indefinite period, is to be made permanent and to be included in permanent establishment. The man employed on such post, having one year approved service is to be included amongst the permanent Government employee. This has also been held by the Court in the case of Mahesh Prasad Swarnkar and others vs. State of Bihar & Ors. in C.W.J.C. No. 7810/88 & other analogous cases.”

7. However, to the contrary, a different view has been taken in L.P.A. No.1136 of 2004 wherein the Division Bench in its judgment dt. 29/4/2005 has interfered with the order of the State Govt. dt. 3.12.2003, whereby the State Govt. had taken a decision to disengage the persons engaged in work charged establishment due to paucity of funds & non-availability of sanctioned posts as



also the order dt. 10.1.2004 cancelling the regularisation in work charge establishment & disengaging such employees. The Division Bench further held that no court can issue a writ of mandamus compelling employer to engage, if it is fundless, workless and postless.

8. The short fact of this case is that petitioners of both the writ applications were appointed on daily wages in between 1980 to 1982 and later on, they were absorbed in the work charge establishment in between 07.12.1984 to 14.03.1986, placed reliance on Memo. No. 565 dated 14.03.1986, the order dt. 15.4.97 passed by a Single Judge in CWJC No. 10686 of 1995, (in the case of Rajo Singh and 31 others, Annexure-8) and sought a direction to regularise their services against Class-III and Class-IV post in the Minor Irrigation Department of the State Government. They have claimed that they had worked in the work charge establishment for more than ten years and, as such, they became entitled for regularisation in service.

9. The Government, vide letter No. 592 dated 03.08.1991, fixed the cut off date i.e. 21/10/1984 for the purpose of regularisation of persons working in work charge establishment preceding for five years, which was challenged in C.W.J.C. No.10686/1995 (Annexure-8 of Rajo Singh case) and the same



was disposed of by a Single Judge vide order dated 15/4/1997, wherein a plea was taken that the said cut off date has no rationality with the object sought to be achieved, rather fixation of cut off date is arbitrary and violates Article 14 of the Constitution of India, as there is no basis or purpose to fix the said cut off date for the purposes of regularisation in service and cannot be held to be proper.

10. The State, in the aforesaid case, on the contrary, had taken a stand that the petitioners were neither appointed against the sanctioned post nor there is sufficient work to justify the regularisation of the employees as well as financial constraint is the biggest hurdle for regularisation of their services. The Ld. Single Judge held that in view of the financial constraint and also in view of inconclusive material regarding the availability of sanctioned posts, it would not be possible for the Court to issue any firm direction for appointment of all the employees of the work charge establishment, hence a direction was issued to the State to frame a scheme and consider the case of the employees for regularisation, which should not be dehors the provisions contained in Article 14 of the Constitution of India and the Court, further, gave liberty to the State to take a decision for regularisation of the services of certain categories of employees on



the basis of length of service as per the scheme but held that there is no rational for fixing the cut off date as 21.10.1984, hence directed the respondent State to consider the case of all employees working in different work charge establishment as per inter se seniority irrespective of any cut off date on account of the fact that there are different work charge establishment in the department. This Court directed to prepare a seniority list at the State level and further held that absorption has to be made against the sanctioned post.

11. When the aforesaid order dated 15.04.1997, passed in C.W.J.C. No. 10686 of 1995 was not carried out, Rajo Singh and others approached this Court by filing a contempt petition bearing M.J.C. No. 3144 of 1997 (Annexure 9 of Rajo Singh case) for implementation of the aforesaid order and this Court, instead of initiating a contempt proceeding, gave another opportunity to the State Govt. to comply the judgment in question, in letter and spirit and disposed off the said contempt petition with an observation that if the judgment in question is not complied within six months from the date of receipt/production of the copy of the order, it will be open for the petitioners to bring to the notice of the Court to take appropriate action against the erring officer/person.



12. In Rajo Singh case i.e. C.W.J.C. No. 10305/2003, prayer has been made for issuance of writ in the nature of mandamus commanding the respondents to regularise the services of the petitioners who are in continued service of the respondent-State in the Minor Irrigation Department for more than 15-25 years.

13. During the pendency of this application, the petitioners filed an application, vide I.A. No. 5656 of 2003 by which certain additional facts have been brought on record and at the same time, prayer has been made to amend and substitute the relief portion of the writ petition in the following terms:-

“This application has been filed for issuance of writ in the nature of certiorari quashing the letter issued by the Secretary-respondent vide Memo no. 5731 dated 03.12.2003 directing the respondent no. 6 to terminate the services of the petitioners and further for issuance of writ in the nature of writ of mandamus commanding the respondents to regularise the service of the petitioners who are in continuance service of the respondent-State in the Minor Irrigation Department for more than 15-25 years working in the work charge establishment.”

14. It may be stated here that Bijoy Kumar Mandal and others had also approached this Court in C.W.J.C. No. 766 of 1998 (Annexure-19 series of Rajo Singh case) for two reliefs, first, for payment of salary for the period of work charge establishment and second to regularise the staff working in the work charge



establishment with effect from 25.12.1985. This Court had held that if the petitioners are similarly situated to those employees who were already adjusted by the Administration (Annexure-1), similar notification should be issued adjusting the petitioners within a period of two months from the date of receipt/production of a copy of the order. The aforesaid order has been confirmed by Division Bench in L.P.A. No. 1436/2000 and by the Hon'ble Supreme Court in S.L.P. (Civil) No. 4767/2001 (Annexure-19 series).

15. In consideration of the order passed in Bijoy Kumar Mandal and others and the contempt application arising from that case vide M.J.C. No. 1276 of 2002, a letter No. 3534 dated 15.07.2003 (Annexure-13/A of Ram Krishna Jha case and Annexure-22 of Rajo Singh case) was addressed to Superintending Engineer, Minor Irrigation Department, Bhagalpur Circle wherein it has been mentioned that the Department is considering the validity of the selection/appointment of 212 daily wages employees for their absorption in the work charge establishment and on account of non-availability of vacant post in the Minor Irrigation Department and closure of most of the projects from a long period and non-functioning of the same, though 212 daily wages employees were absorbed in work charge establishment, but they could not be brought into the regular establishment as the Government is not in a



position to bear the cost of 212 employees, working in the work charge establishment, hence it was postulated in the said letter that in view of the order passed in Bijoy Kumar Mandal (supra), a show cause be issued as to why the services of 212 persons be not dispensed with on account of non-availability of the post and inability to bear the burden of 212 employees working in the work charge establishment and after receipt of the show cause, the entire matter be placed along with his own comment for consideration (Annexure 13/A in C.W.J.C. No. 212 of 2004).

16. The Joint Secretary, Minor Irrigation Department, Government of Bihar addressed a letter, vide letter No. 5731 dated 03.12.2003 (Annexure-10 of CWJC No. 10305 of 2003) to the Superintending Engineer, Bhagalpur Circle in which it has been recorded that though the question of regularisation of 212 daily wages employees was under consideration of Finance Department but on account of closure of most of the projects (scheme) and stoppage of work for long period and inability of the Government to bear the load of establishment on account of continuation of 212 employees a letter be issued to the petitioners regarding withdrawal of letter No. 565 dated 14.03.1986 and an action taken report be submitted. Accordingly, a show cause was issued regarding withdrawal of letter No. 565 dated 14.03.1986, in pursuance



whereof, the petitioners and others filed their respective show cause reply. In the representation of Rajo Singh (Annexure-11), it has been stated that the petitioners are not required to give any comment on the Office Order No. 3534 dated 15.07.2003 on account of the fact that they were removed from the Department, however, after the judgment of the High Court, they had submitted their respective joining and further they have been regularised in service by the order of Superintending Engineer, Bhagalpur, vide letter No. 565 dated 14.03.1986, having been absorbed in work charge establishment, nonetheless, the Superintending Engineer, Bhagalpur Circle vide letter No. 1181 dated 24.09.1993 and Executive Engineer vide letter No. 1230 dated 29.09.1993 reverted them from work charge establishment to daily wages employees, which was challenged by filing a writ application before this Court, interalia praying therein for quashing the order of reversion from work charge establishment to daily wages employees. As regards the show cause, withdrawing letter No. 565 dated 14.03.1986, it was submitted that the Authority may examine the direction of the High Court and thus requested not to withdraw the letter No.565 dated 14.03.1986, otherwise they will come on the road (Annexure-11 series of C.W.J.C. No.10305 of 2003).



17. In pursuance thereof, the Superintending Engineer vide Memo No. 22 dated 10.1.2004 (Annexure-16 of CWJC No.10305 of 2003) has withdrawn the Office Order No.565 dated 14.03.1986 and the absorption in work charge establishment has been cancelled. The same has been challenged by way of I.A. No. 295 of 2004, in the present proceedings.

18. The learned counsel for the petitioners submits that the reason assigned in the foregoing letters to the effect that the work was not available, is belied from the letter No.4900 dated 20.09.1994 (Annexure-5, Rajo Singh case) and on that strength the learned counsel for the petitioners has submitted that the posts of Class-III and Class-IV were available but on account of the order passed in the case of Bijoy Kumar Mandal and others (supra), their services have been dispensed with and have further placed reliance on the letter No. 145 dated 30.09.2003 (Annexure-13, Rajo Singh case), written by Assistant Engineer, Irrigation Department to Executive Engineer mentioning about the explanation submitted by the petitioners and other employees and requesting that the same may be considered sympathetically, as they have been discharging their duty in different projects (scheme) and their presence were necessary as they run the project and look after day to day work of the project, inasmuch as they were over age and would not be able



to get any employment elsewhere. The letter No.865 dated 4.11.2003 (Annexure-14 of CWJC No. 10305 of 2003), addressed by Executive Engineer, Minor Irrigation Department, Munger to Superintending Engineer, explains that the daily wage employees were discharging their duty in different projects including different government godowns, and furnished details showing that at certain places they were allotted the irrigational work of the agricultural field, though mentioning that certain projects were closed, nonetheless, giving details in what manner they were required. Further, reliance has been placed on a letter of Superintendent Engineer vide letter No. 703 dated 15.11.2003 (Annexure-15 of C.W.J.C. No. 10305 of 2003), giving details of 212 persons, posted at different places in different schemes in Bhagalpur, Minor Irrigation Circle and the said letter itself reflects that 212 persons were posted at respective places. Reliance has also been placed on the order dt. 21.01.1997, passed in C.W.J.C. No. 6994 of 1995, Arvind Kumar Sinha vs. State of Bihar (Annexure-25 of C.W.J.C. No. 212 of 2004), wherein finding has been recorded taking note of the facts mentioned in the counter affidavit, filed by the Secretary of the Department about the availability of 250 vacancies and no step having been taken for regularisation of the daily wages employee. The Court has recorded that since the respondents have



taken a stand that as and when vacancies were made available, step would be taken for regularisation on the basis of seniority of each candidate, the case is being disposed of with a direction to the respondents to consider the claim of the petitioners for regularisation on the basis of seniority vis-a-vis other candidates, against the available vacancies without any further delay.

19. It has further been pointed out that certain persons were absorbed in the work charge establishment along with the petitioners and some of them have been absorbed in the regular establishment vide Office Order No.42/2013/07 dated 12.01.2015 (Annexure-33 of Ram Krishna Jha case), hence these petitioners have been discriminated with, since some of the persons in the list, who have been absorbed in the work charge establishment along with the petitioners have been regularised in regular establishment but on the other hand, the services of the petitioners have been dispensed with.

20. The learned counsel for the petitioners has placed reliance on a judgment reported in 2001 (3) PLJR 15 [Tulsi Prasad Singh v. State of Bihar] in which, placing reliance on Memo No.1344 dated 4th February 1949, issued by the Finance Department, mentioning the condition of service of employees of the work charge establishment, followed by a Gazette Notification vide PT2(ii)



No.17 dated 26th April 1950 Political and Appointment Department Notification dated 15th April 1950 No. 355-3L-27/50A, which mandated that all enactments, rules and orders which were made under any enactment or otherwise which regulated the recruitment and condition of services of persons appointed through public services and posts in connection with the affair which are not the affair of the State of Bihar and which were enforced immediately before 26th January 1950 shall, until provision is made by or under the Act of the State legislature to regulate such recruitment and conditions of service, be enforced as if they had been made by virtue of power under the said proviso and on that basis, the learned Single Judge held that the aforesaid statutory Rule postulates, the posts which are permanent in nature, their being requirement of 12 months in a calendar year and continuing for long and indefinite period is required to be included in permanent establishment, with incumbent of the post having one year of approved service, thus direction was given to consider the case of Tulsi Prasad Singh and others for absorption in regular/permanent establishment along with incumbents holding the posts having satisfactory service and against whom no criminal or departmental proceeding is pending. It will be relevant to quote paragraph 11, 12 and 13 of the said judgment, which is as follows:



“11. From the discussion made above, it will be evident that the statutory rule under proviso to Art. 309 (No. 1344, dated 4 February, 1949), still holds good and is applicable to the employees of work charged establishment. In terms with aforesaid statutory rule the condition of services of employees of work charged establishment is identical to those of temporary Government servants.

The aforesaid statutory rule also stipulates that the posts which are permanent in nature; there being requirement for 12 months in calendar year and continuing for long and indefinite period is required to be included in the permanent establishment, with the incumbents of the posts, having one year of approved service.

The Finance Department resolution, dated 30 December, 1981 (Cl. (11) therein), relating to time bound promotion having made, adopted and applicable for employees of work charged establishment by virtue of the statutory rule, dated 4 February, 1949. Thereby, the respondents cannot deny the petitioner or other work charged employees, who fulfill the requisite condition, the benefits of time bound promotion.

This apart, in terms with statutory rule, dated 4 February, 1949, the post of work charged establishment which are permanent in nature are to be taken in the regular/permanent establishment along with incumbents holding the posts having satisfactory services and against



whom no criminal or departmental proceeding is pending.

12. *Accordingly, I direct the respondents to consider the case of petitioner for his absorption/conversion in the regular/permanent establishment, if necessary, on conversion of the post against which he is functioning, petitioner having completed 16 years of service.*

13. *The respondents are also directed to consider the case of petitioner for time bound promotion from the date he completed 10 years of service, in terms with resolution dated 30th December 81, if no promotion granted in the meantime.*

A decision in this respect be taken and communicated to the petitioner within a period of six months from the date of receipt/production of a copy of this order.

The petitioner will produce a copy of this order before the Secretary, PHED, Patna; Engineer-in-Chief, PHED, Patna, Regional Chief Engineer, PHED, Ranchi and his controlling officer who are to ensure compliance.

The writ petition stands disposed of with aforesaid observation and direction.”

21. It has further been submitted that the said Notification of 1949 remained in operation till the framing of rules under Article 309 of the Constitution of India by the State Government vide Notification No.10709 dated 17.10.2013 whereby and whereunder the Work Charge Establishment Condition of Service 1949 has been repealed, but the action taken therein has been saved (Annexure-32



of Rajo Singh case). Further reliance has been placed on the judgment reported in 2007 (1) PLJR 358 (Koshi Project Worker's Association and anr. v. State of Bihar and ors.), wherein the Division Bench has followed the judgment passed in Tulsi Prasad Singh case (supra) and has held that employees working therein will be absorbed in a permanent post, the post will be made permanent and the employees holding those posts having one year approved service will be included amongst the permanent employee. Accordingly, the Court has held that an employee working in the work charge establishment, who has completed one year as majdoor in the work charge establishment, by fiction of law, becomes a permanent Government employee. It will be relevant to quote paragraph No.10 and 11 of the said judgment, herein below:-

“10. In view of the said notification published on 26th April, 1950 the revised condition service of work-charge establishment as decided by the Government on 4th February, 1949 became legislative service rules pertaining to the employees of the work-charge establishment of the Government. As a result of such decision of the Government which has not yet been cancelled or repealed by any enactment made by the Legislature of the State. An employee working in the work-charge establishment for a period of more than one year is deemed to have become a member of the permanent establishment of the State Government.



11. *In the writ petitions, dealt with under the impugned judgments, it was not in dispute that the petitioners therein worked for more than one year in the same post in the work-charge establishment before being promoted to the post of Clerk/Assistant. It was not the contention in the impugned orders, as were challenged in the writ petitions, nor it was the contention in the writ petitions or before us that majdoors, i.e. Class-IV employees, cannot be promoted to the post of Clerk/Assistant belonging to Class-III by virtue of any decision of the Government. In view of the decision of the Government referred to above each of the writ petitioners became a permanent Government employee immediately on completion of one year from joining as majdoor in the work-charge establishment. Since then they became, by fiction of a law, employees of the permanent establishment, although as majdoors, i.e. Class-IV employees. There, therefore, appears to be no just reason for holding out in the orders impugned in the writ petitions that promotions granted to the petitioners were inappropriate.”*

22. The petitioners have further placed reliance on the order passed in the case of Arbind Kumar Sinha (supra) and also on the memo dated 23.10.1987 (Annexure-B of Rajo Singh case), wherein it has been mentioned that in different departments, a large number of employees were working in the work charge establishment and they were successfully discharging their respective duties, as such, the Government has resolved to



regularise services of those persons who have worked for five years preceding 21.10.1984.

23. The learned counsel for the petitioners submits that the cut off dated of 21.10.1984 has been held by this Court to be arbitrary & having no rational in C.W.J.C. No.10686 of 1995 (Annexure 8) and this Court had directed to consider the case of all employees working in different work charge establishment, irrespective of any cut off date, on the basis of their inter-se-seniority, while holding that the cut off date i.e. 21.10.1984 is not proper and violates Article 14 of the Constitution of India.

24. The learned counsel for the petitioners submits that since this Court had disposed of Bijoy Kumar Mandal case (supra) on 26.08.1999, wherein direction was given to regularise the services, the same has led to termination of the services of the petitioners. Reliance has also been placed on the judgment and order dated 04.02.2019 passed in L.P.A. No.166 of 2018, Mobina Khatoon vs. The State of Bihar and others (para 53 and onward). It has been submitted that it would be equitable, since the petitioners have worked for such a long period that they are regularised in regular/permanent service so that they would be able to secure social security by way of Pensionary Benefit. The petitioners have also placed reliance on the letter dated 28.05.2003 (Annexure-21 of



Rajo Singh case) wherein it has been mentioned that though at present the posts are not available, but in future, upon availability of sanctioned posts, persons in work charge establishment list would be considered for their absorption. Reliance has also been placed on the letter No. 354 dated 1st July 2004 (Annexure-24 of C.W.J.C. No. 212 of 2004) written by Superintending Engineer to the Chief Engineer, wherein it has been stated that 97 projects were established and out of those 72 are non-functional and if all the projects become functional, under such circumstance, all these employees would be required.

25. Per contra the learned counsel for the State has submitted that those, who have been regularised in service through Annexure-33 of C.W.J.C. No. 212 of 2004, were appointed before those whose names are appearing in the letter No. 565 dated 14.03.1986 (Annexure-1 of C.W.J.C. No.212 of 2004), hence these petitioners cannot compare themselves with those regularised in service.

26. On perusal of the aforesaid Notification, it appears that the office of Superintending Engineer issued the said letter No. 565 dated 14.03.1986 mentioning therein that in view of the order of Irrigation Department, issued vide Office Order No. 5624 dated 16.10.1985 and the decision of the Establishment Committee dated 21.06.1986, persons mentioned therein who were working as daily



wage employees, were absorbed against the work charge establishment and services of some of the persons, who were left out, were also considered and the office of Superintending Engineer, vide letter No. 1788 dated 24.08.1986 (Annexure-1/A of C.W.J.C. No.212 of 2004) had regularised services of 10 persons in the work charge establishment. On examination of both the documents it appears that persons working as daily wager from 1979 to 1982 were brought and absorbed in the work charge establishment. It has further been submitted that the Government has issued memo. dated 23.10.1987 (Annexure-B of Rajo Singh case), which is in continuation of Memo. No. 3058 dated 22.10.1984, wherein it has been mentioned that those who have worked in the work charge establishment for five years, will be brought to the regular establishment but there would not be any further induction in the work charge establishment. Even thereafter, persons were brought to work charge establishment, they continued to discharge the duty and the Department after consideration of their continuation of services and agony came out with Government Resolution No. 6394 dated 23/10/1987 by which it was decided that those who have worked for five years preceding 21.10.1984 will be brought to the regular establishment. Thereafter, the Government had again issued a Notification, vide Resolution dated 17.10.2013,



wherein it has been mentioned that even after the decision of the Government taken vide Resolution No. 6394 dated 23.10.1987, not to appoint any further in the work charge establishment, it remained unabated, the recruitment continued and persons continued to be inducted as such they have been working continuously in work charge establishment and the matter once again came for reconsideration for regularisation of those working on work charge establishment. In the said Notification, it has been mentioned that earlier the Government vide Resolution No. 489 dated 10.05.2005 had taken a decision that those who have worked prior to 11.12.1990 were to be brought to the regular establishment but taking gamut of all facts into consideration, the Government again revisited the issue of regularisation with respect to the employees working on work charge establishment and accordingly those, who have worked on or before 11.12.1990 and their services were found to be satisfactory, a decision was taken to convert their services to the regular establishment. In the said letter it has been mentioned that the worker would be brought to the regular establishment corresponding to the post being held in the work charge establishment and if the post was not available, the person along with post would be brought to the regular establishment and on superannuation, the said post will die out automatically. In the said



letter, it has been further mentioned that those, who have been appointed after 11.12.1990, were/are not required in services, will be terminated by the competent authority and if the direction is not carried out, appropriate action would be taken against the officer concerned.

27. The learned counsel for the State has placed reliance on the letter No. 3534 dated 15.07.2003 (Annexure-13/A of C.W.J.C. No. 212 of 2004) written by the Joint Secretary to the Superintending Engineer taking the plea of the order passed in the case of Bijoy Kumar Mandal and others (supra) by which the Court had directed to consider their cases and if similarly situated persons have been brought to the regular establishment, their cases should also be considered accordingly. The said order was tested in L.P.A. No. 1436 of 2000 (Annexure 19 series of Rajo Singh case) unsuccessfully. The same was again challenged before the Hon'ble Supreme Court in S.L.P. (Civil) No. 4767 of 2001 (Annexure-19 series) unsuccessfully and thereafter the aforesaid letter has been issued giving direction to the Superintending Engineer to issue notice to those 212 daily wages employees who have been regularised in work charge establishment and terminate their services, as the Government is not in a position to bear the cost of their salary as well as major portion of the works of work charge



establishment have been found to be non-functional for a long period. Again another letter was issued by Joint Secretary, bearing No.5731 dated 3.12.2003 (Annexure-14 of C.W.J.C. No.212 of 2004), reiterating the same thing to the effect that the Government is not in a position to bear the establishment cost of 212 persons working in work charge establishment, as majority of the projects were found closed for long period and there was no justification to keep those employees, who were regularised against the work charge establishment and accordingly direction was issued to issue a show cause and take decision finally to terminate the services of such employees from work charge establishment and only then, the final order of termination has been passed, vide Memo No. 22 dated 10.01.2004, (Annexure-17 of C.W.J.C. No.212 of 2004) whereby the services of daily wage employees, who were working in the work charge establishment, have been terminated.

28. The learned counsel for the State has submitted that the regularisation of only these persons can be made who would be found to be working on the day of policy decision taken by the Government, vide Resolution No. 10710 dated 17.10.2013 and those, who were not found working, their matter cannot be taken into consideration for their regularisation and to bring them in regular establishment. It is submitted that admittedly these



petitioners were not working on the day of the decision taken by the Government, vide Resolution No. 10710 dated 17.10.2013, hence their names are not appearing in the Office Order No.42/2013/07 dated 12.01.2015 (Annexure-34) as such, they cannot claim any discrimination. It has been submitted that the resolution may not have a statutory force of law, but it is binding on the authorities and they have to act as per the decision taken by the Government's Resolution, but the violation of the terms of regularisation does not give them the right to challenge the action taken by the Government.

29. The learned counsel for the State has submitted that the judgments reported in 2001 (3) PLJR 15, Tulsi Prasad Singh (supra) and 2007 (1) PLJR 358, Koshi Project Worker's Association (supra) are no longer a good law in view of the judgment reported in 2006 (1) PLJR 323 (Most. Roopkali Kuer vs. the State of Bihar and ors.) wherein 1949 letter issued by the Public Works Department has been explained. It is submitted that the judgment passed in the case of Koshi Project Workers' Association, reported in 2007 (1) PLJR 358, cannot be pressed in service as the judgment passed in Koshi Project Workers' Association (supra) has not taken into consideration of Most. Roopkali Kuer case (supra). Reliance has been placed on a judgment reported in 2016 (1) PLJR 452 (The



State of Bihar and others vs. Bimli Devi), wherein the judgment reported in 2007 (1) PLJR 358 has been discussed and further reliance has been placed on a judgment reported in 2007 (4) PLJR 259 (Durganand Jha and others vs. the State of Bihar and others), specially para 13 to 16, 18, 20, 21, 24 and 25) to canvass the proposition that the person, who does not enter into a service properly, cannot claim regularisation in view of the fact that there may be an irregular or illegal appointment, but in the case of illegal appointment, no right is conferred and the entry of the person in the service is itself void. In support of his contention, reliance has been placed on a judgment reported in 2014 (4) PLJR 229 (State of Bihar and anr. vs. Bhagwan Singh [since dead]) and further reliance has been placed on the judgment reported in 2013 (1) PLJR 964 (Ram Sevak Yadav vs. the State of Bihar) specially upon para 7, 28, 33, 41 and 43.

30. The learned counsel for the petitioners in reply has argued basically on the aspect of discrimination being meted out to the petitioners, since certain persons namely, Shailesh Jha and Tripurendra Narayan Singh, who are at serial nos. 5 and 6, have been regularised by an Office Order No.42/2013/07 dated 12.01.2015 (Annexure-34 of Rajo Singh case). The Ld. Counsel has drawn attention to Annexure-1 to submit that the name of Shailesh



Jha is at serial no.7 and in order to substantiate his submission, he has placed reliance on the service book of Shailesh Jha (Annexure-30 of Rajo Singh case) wherein entry has been made vide Memo no.565 dated 14.03.1986 and Memo No.1189 dated 17.06.1986 and Shailesh Jha, who was working as daily wages employee as Pump Driver has been absorbed in the work charge establishment. In the case of Tripurendra Narayan Singh, identical entry has been made. It is submitted that these two persons, were working along with these petitioners and others, who were also absorbed by the same order in the work charge establishment but these writ petitioners have been terminated from service on the ground of closure of project, excess persons working in the project and the Government not being able to carry the burden of 212 persons, which is apparently clear from letter No.5731 dated 3.12.2003 (Annexure-10 of Rajo Singh case), vide the final order of termination, issued vide Memo No. 22 dated 10.01.2004 (Annexure-16 of Rajo Singh case). It is further submitted that though the aforesaid persons have ultimately been regularised in service vide Office Order No.42/2013/07 dated 12.01.2015 and their names appear at Sl. No.5 and 6 respectively (Annexure-34), the writ petitioners services have been terminated, which is a clear reflection of selective identification and termination of those who could not make



arrangement for sustenance in service. It has further been stated that the writ petitioners have managed to make arrangements for their continuance in service by way of transfer and under such mechanism, they have remained protected from the effect of order of the termination, whereas letter No. 5731 dated 3/12/03 (Annexure-10) along with letter No. 22 dated 10/1/04 (Annexure-16), though includes aforesaid person and mentions about termination of 212 persons but because they were blue eyed boys, they remained protected from the dragnet of the order of termination. It is also submitted that they are still getting salary which is apparently clear from salary sheet forming part of Annexure-30, indicating the payment of these persons, which is a flagrant violation of Article 14 and 16 of the Constitution of India, hence it is submitted that the order of termination should be set aside and they should be treated to be all along in service so that they would be entitled to the pensionary benefits.

31. Both the aforesaid cases have been referred to the larger Bench, as the learned Single Judge vide order dated 13.10.2006 passed in C.W.J.C. No. 10305 of 2003, noticed the conflict in between the order passed in C.W.J.C. No. 6212 of 1999, which was affirmed in L.P.A. No. 1573 of 2000 and the judgment passed in L.P.A. No.1136 of 2004, as the earlier Bench has held that the



employees were entitled for regularization from work charge establishment to the regular establishment and has set aside the orders dated 03.12.2003 and 10.01.2004, cancelling the absorption of the employees even in the work charge establishment whereas in L.P.A. No. 1136 of 2004, contrary view has been taken.

32. On consideration of the case of Uma Shankar Rai Vs. State of Bihar, C.W.J.C. No. 6212 of 1999, the learned Single Judge held that Resolution No. 5349 dated 18th June 1985 is not applicable in the case of petitioners, as they were guided by a separate rule framed under proviso to Article 309 of the Constitution of India and placed reliance on the Notification No. 2555/31-27/50-A dated 15th April 1950 and 1949 Notification was held to be a rule under proviso to Article 309 of the Constitution of India. The Court has further held that since the petitioners have continued in work charge establishment for more than one year and the post against which they were allowed to continue was in existence from more than 10 years, the petitioners have right to be taken into regular establishment in regular scale of pay in terms of the 1949 Rules. The Court also held that Resolution No. 6394 dated 23rd October 1987 and Memo No. 5349 dated 18th June 1995 were not applicable to the work charge employees appointed prior to 1987 and declared the action of termination to be illegal, hence set aside the same. The



same was affirmed in L.P.A. No. 1573 of 2000 (The State of Bihar Vs. Uma Shankar Rai) but on the contrary, in the case of Sapan Kumar Das Vs. State of Bihar, C.W.J.C. No. 146 of 1999, the Single Bench has considered the scheme of the work charge establishment and has also recorded that most of the scheme have either been closed or are non-functional and 212 persons, who have been terminated, were not working against the sanctioned post, inasmuch as, the scheme of work charge establishment is no longer in existence, hence the employees are no longer required to be kept in service as well as the Government was facing financial crunch, thus the Government cannot be compelled to engage employees without availability of work and regularise their service without having sanctioned post.

33. In view of the subsequent judgment of Hon'ble Supreme Court and this Court, it is no longer required to resolve the conflict in between the judgments passed in the case of Uma Shankar Rai (supra) and the one rendered in the case of Sapan Kumar Das (supra), since in the judgment passed by the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi (3), reported in (2006) 4 SCC 1 and the subsequent judgments, which have followed the foot print of the Uma Devi case, have successively held that a person must enter into service following the



due procedure of selection such as issuance of advertisement, adoption of appropriate selection process for the sanctioned post, holding of requisite qualification by the incumbent and only then the engagement/appointment will be treated to be a legal appointment/engagement but in the event of failure to take aforesaid steps, a person engaged, as such, will be treated to be a back door entry in the service and such entry of a person shall be termed to be castigated, since any engagement without observance of aforesaid procedure, is void appointment/engagement and cannot be approved by the court of law.

34. This Court in the Full Bench judgment, rendered in the case of Ram Sevak Yadav (supra) has held that appointment of person who has entered in the services without following the due process of law, will be treated to be illegal and an invalid appointment and he will not have a legal right to continue in service, as such, he would not acquire any right to hold the post. This Court has further held that such persons who have entered into the service without observance of the due process of law, should be pushed out from the same door through which they have entered. It will be relevant to quote para No. 43 of the judgment rendered in the case of Ram Sevak Yadav (supra) herein below:-

“We therefore sum up our conclusions and answer the reference as follows :-



(A)Uma Devi (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B)An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

(C)Irregular appointments can be regularised if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D)The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

35. Recently, the Hon’ble Supreme Court has again considered the status of a person who has entered into service through the back door in a judgment rendered in the case of Upendra Singh vs. State of Bihar, reported in AIR 2018 S.C. 1315 and the Hon’ble Apex Court has approved the judgment rendered in the case of Ram Sevak Yadav (supra) having held that they do not carry any legal right. The same view has been taken in the case of the State of Bihar and others Vs. Kirti Narayan Prasad, reported in 2019 (1) PLJR 102 SC, having held that unless the appointment is in terms



of relevant rule and has been made after proper competition among the qualified persons, the same would not carry any right for continuance in service, consequently such appointments were declared illegal and ab-initio void.

36. The present cases in hand are to be examined in the back ground of the guidelines set out in the aforesaid judgments, since the issue raised stated herein below, is no longer in conflict hence is not required to be resolved:

“Whether the letter of Finance Department has status of Rule governing the service condition of employees working in work charge establishment.”

37. In the present cases, the petitioners have laid emphasis that the Finance Department Memo No. 1344 dated 04/02/1949 read with Bihar Gazette P.T. 2 (ii) No.-17 dated 26th April 1950 No.355-3L-27/50A, have acquired statutory force in view of legal position in law, hence Memo No. 1344 dated 4/02/1949 should be treated to have taken shape of Rule framed under Art. 309 of Constitution of India, as has been held in the judgments, reported in 2001 (3) PLJR 15 (supra) and 2007 (1) PLJR 358 (supra). In both the judgments, the Single Bench and Division Bench, while placing reliance on the aforesaid memo of the Finance Department, have held that the said memo sets out the condition of service of the employees of the work charge establishment. The relevant portion of Finance



Department's Memo No. 1344 dated 04.02.1949 is quoted herein below:-

"Subject-Revised condition of service of work-charge establishment.

"The existing distinction of service of work-charged establishment temporary and permanent establishment and daily labour as given in the PWD Code and PWD Accounts Code will be maintained but the conditions of service of work-charged establishment will henceforth be identical with those of temporary Government servants.

The post of work-charged establishment which are of permanent nature, that is required for 12 months in the year and for long and indefinite period will be made permanent and included in the permanent establishment and the men employed on these posts having one year's approved service will be included amongst permanent Government employees. Details in this connection are being worked out and till this is done the conditions of service applicable to temporary government servants will apply to all work-charged posts."

38. The aforesaid memo is prior to enforcement of the Constitution and so it cannot be said to be a rule under Article 309 of the Constitution of India, inasmuch as only after the said letter was issued by the Finance Department, Government of Bihar, the Bihar Gazette P.T.2(ii) No. 17 dated 26th April, 1950 Political and Appointment Department Notification dated 15th April, 1950 No.355-3L-27/50A came into existence, whereafter, the aforesaid Memo of Finance Department was declared to be enforceable as Rule governing the service condition of work charge employee. The relevant portion thereof is reproduced herein below:-



“In exercise of the power conferred by the proviso to Article 309 of Constitution of India, the Governor of Bihar is pleased to make the following rules, namely:-

“All enactments, rules and orders, which are made under any enactment or otherwise, which regulated the recruitment and condition of services of persons appointed through public services and posts in connection with the affair which are not the affair of the State of Bihar and which were enforced immediately before the 26th January, 50, shall, until provision is made by or under any Act of the State legislature to regulate such recruitment and conditions of service, be enforced as if they had been made by virtue of the power under the said proviso”.

By the order of the Governor of Bihar.

sd/L.P. Singh

Chief Secretary

39. The aforesaid Gazette Notification stipulates about enforcing enactment, rules or orders, which were made under any enactment or otherwise, which regulate the recruitment and condition of service of persons appointed through the public service and post in connection with the affair which are not affair of the State of Bihar which were enforced immediately before 26.01.1950, as if they had been made by virtue of the power under the said proviso to Article 309 of the Constitution of India. On a close scrutiny of the aforesaid provision it appears that what has been saved is the enactment, rule or order which were framed under an enactment or otherwise, however, the letter which has been issued by the Finance Department, applying doctrine of *ejusdem generis*, i.e. of the same class or kind, in the considered view of this Court,



cannot take shape of the provision framed under any enactment on two counts, one it was framed prior to come into force of the Constitution of India and the 1949 letter is not emanating from enactment, rule or order framed under the enactment and moreover, a further condition has been attached that the person must be appointed through Public Service, hence Article 14 & 16 of the Constitution of India would come into play, since it presupposes entry in public service through an open competition, so in the considered opinion of this Court, the letter issued by the Finance Department cannot be said to be a service rule with respect to the employees of work charge establishment, as such in our view, correct interpretation has not been given by the Single Bench in the judgment reported in 2001 (3) PLJR 15, [Tulsi Prasad Singh (supra)], thus we hold that the law propounded in the said judgment is not a good law. Similar view has been taken by the Division Bench in the judgment reported in 2007 (1) PLJR 358, [Koshi Project Worker's Association (supra)] and it has been held that in view of the said notification published on 26.04.1950, the condition of service of employees of Work Charge Establishment has been prescribed by the Government in the letter of Finance Department Memo dated 4/02/1949, which became legislative rule pertaining to the employees of the work charge establishment of the Government



of Bihar. This finding is completely misdirected and cannot be approved to be a good law, as has been explained at length herein above.

40. Recently, a Full Bench of this Court has also considered the aforesaid two judgments in a judgment passed by it in L.P.A. No.166 of 2018 and L.P.A. No.289 of 2018 (Mobina Khatoon vs. State) dated 04.02.2019, wherein the Ld. Full Bench of this Court has held that both the judgments are *per incuriam* and not a good law after enforcement of the Bihar Pension Rules. It will be relevant to quote para 5 at page No. 63 of the aforesaid judgment rendered in the case of Mobina Khatoon (*supra*), herein below:-

*“It has been conclusively held by him that most of the judgments pronounced earlier were per incuriam, since they were on the basis of the assumption that Memo No. 1344, dated 04.02.1949, contained in the Bihar Public Works Department Code, was still operational, and that it is supplemented by Memo No. Pen-1024/69/11779F, dated 12.08.1969. This would mean that work charge employees would be treated at par with temporary employees, and therefore would be entitled to the benefits of Rule 59 of the Bihar Pension Rules, 1950. The case of Sarasvati Devi (*supra*), decided by a Division Bench of this Court, was based upon this line of reasoning. This, however, as has been pointed out by my esteemed Brother, is an incorrect reading of the law, as the Bihar Pension Rules, 1950, upon its very commencement, led to the extinguishment of all*



circulars issued prior to the same. This would mean that the circular became non est, and, therefore, such a reading of the two circulars together, with the effect of entitling work charge employees to pensionary benefits, would become impossible.

41. This Court is also of the same view, but a different reason has been expounded herein above as to why it is not a good law, specially considering that the letter issued by the Finance Department is not an enactment, rule or order framed under an enactment or otherwise but was a simple letter and what has been saved is the enactment, rule or order and not such kind of letters. The said letter cannot be treated to be either enactment or rule or order.

42. The conflicting view with respect to regularisation has been enunciated in the case of Uma Shankar Rai (supra) and Sapan Kumar Das (supra), though both the judgments are on the same subject, but the view taken herein is completely contrary to each other. In the case of Sapan Kumar Das (supra), the Court has taken a view that if there is no sanctioned post or the Government has financial crunch or scheme under which the persons were engaged has no work then employer/Government would be liable to disengage the persons working in work charge establishment as daily wage employees. The Division Bench has also held that no



Court can issue a writ of mandamus compelling the employer to engage a person even if it is fundless, workless & postless.

43. We are of the view that the correct position of law is that every employer and the Government has a right to organize its own establishment and has a right to decide the number of person required for engagement, as it is completely a primary and universal right of the employer and the Court cannot adjudicate upon or issued direction regarding the number of the worker to be employed to carry out the work, hence we endorse the aforesaid view taken in the case of Sapan Kumar Das and others (supra).

44. Now coming to another aspect of the matter, i.e. the services of the petitioners cannot be regularized, since they have been terminated from the service vide Memo No. 22 dated 10.01.2004 (Annexure 16 of Rajo Singh case) and they have not been taken back in service, thereafter, at any point of time. A Court can grant the benefit of regularization only when the relationship between master and employee subsists, however, in the event of breaking of such relationship, the relief of regularization cannot be granted. Reliance is placed on a judgment rendered by the Hon'ble Apex Court in the case of Oshiar Prasad and others vs. Employer in relation to Management of Sudamdih Coal Washery of M/S Bharat Coking Coal Ltd., Dhanbad, Jharkhand reported in (2015) 4 SCC



71, particularly para 25, thereof and this view has been affirmed in the case of Management of Barara Cooperative Marketing reported in 2019 (1) PLJR 353 (SC). Thus, both the aforesaid judgments have held that a person can get the relief of regularization in the event, the relationship of master and servant subsists, the moment it comes to an end, the question of seeking relief of regularization does not arise. Para 25 of the Judgment rendered by the Hon'ble Apex Court in case of Oshiar Prasad and others (supra) is reproduced herein below:-

“25. It is a settled principle of law that absorption and regularisation in service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and the employer. Once it comes to an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.”

45. Now coming to the merit of the present writ petitions it is apparent that the claim of petitioners is for setting aside the order of termination. It is a fact that the petitioners were working as daily wagers and vide Memo No. 565 dated 14.03.1986, these petitioners were brought to the work charge establishment. Rajo Singh had approached this Court for regularization of his services in C.W.J.C. No.10686 of 1995 (Annexure-3) and this Court had not issued a



writ of mandamus, but directed to consider the case of employees working in different work charge establishment, irrespective of any cut off date, on the basis of *inter se* seniority. Further in the case of Arbind Kumar Sinha (supra) (Annexure 25 of Ram Krishna Jha case), a Single Bench of this Court had directed to take steps for regularization on the basis of seniority of other candidates against available vacancies. Thereafter, in the case of Bijoy Kumar Mandal (supra) (Annexure 19 series of Rajo Singh case), a Single Judge of this Court had directed to adjust the petitioners in regular establishment and this matter was carried upto the Hon'ble Supreme Court, whereupon the State Government made assessment of need of petitioners to be brought in regular establishment and found that most of the scheme were closed and had become non-functional, hence it was very difficult for the Government to bear the load of 212 persons, thus it directed for termination of their services. Reliance can be placed on the letter issued vide Memo No.5731 dated 03.12.2003 (Annexure 10 of Rajo Singh Case) and letter No. 3534 dated 15.07.2003 (Annexure 13/A of Ram Krishna Jha case) where such averments have been made. Under such circumstances, the Government took entire matter into consideration, including financial burden as well as financial position of the State and took a decision to off load the burden of



212 persons attached with different schemes, upon consideration of their mode of entry, the fact that they entered as daily wager and later on got absorbed in work charge establishment, the fact that they had not undergone through any selection process nor their names were called from the employment exchange nor any advertisement was published for their recruitment nor they were ever called for the interview and no procedure of selection process, for appointment as government servant, was ever followed. In such view of the matter, their status will be as such of illegal entrant through the back door and such engagement has been held by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi (3), reported in (2006) 4 SCC 1, to be illegal in affirmative words. The Hon'ble Apex Court has expounded the distinction between the irregularity and illegality and has held that the person who has entered into service in an illegal manner has no right to continue in service and if the entry is in an irregular manner then the cases of such persons who have continued in service for 10 years, shall be taken into consideration by way of one time exercise for regularization. The said view of the Hon'ble Apex Court has been reiterated in various judgments of the Hon'ble Supreme Court and this Court is not required to deal with the same elaborately but a brief reference would suffice to substantiate that a person who has



entered into service illegally, does not have the right to continue in service. Reliance can be placed on the judgments passed in the case of Durganand Jha (supra), Most. Roopkali Kuer (supra) and Ram Sevak Yadav (supra).

46. The judgment passed in the case of Ram Sevak Yadav (supra) by the Ld. Full Bench of this Court has been approved by the Hon'ble Supreme Court in the case of Upendra Singh Vs. The State of Bihar, reported in AIR 2018 SC 1315 :: 2018 (3) SCC 680 and further in the judgment reported in 2019 (13) SCC 250 :: 2019 (1) PLJR 102 SC (State of Bihar and others Vs. Kirti Narayan Prasad), thus in such view of the matter, this Court is of the view that as the entry of the writ petitioners in the service has not been in a proper manner i.e. after following the due process of law, under such circumstance, this Court refuses to interfere with the impugned order by which the petitioners have been terminated from their services in the work charge establishment. Before concluding, the Court would take note of another aspect which has been highlighted by the petitioners, pointing out that the services of certain persons, who were brought in the work charge establishment along with the petitioners, have been regularised by Office Order No.42/2013/07 dated 12.01.2015. It has been stated that despite their dismissal by common Memo No. 22 dated 10.01.2004, they have been allowed



to continue in services and finally their services have also been regularised by the aforementioned Memo dated 12.01.2015 for extraneous considerations. However, as neither such persons are before the Court, nor their continuance in service beyond 10.01.2004 and regularisation by Office Order No. 42/2013/07 dated 12.01.2015 is in question in these writ petitions, the Court would refrain from issuing any direction on this issue. Thus, it is left open for the persons concerned to approach the appropriate forum in the matter. It goes without saying that if the same is done, the authorities concerned would look into the same, and take appropriate action, in accordance with law, keeping in mind that illegality, if any committed, is not allowed to be perpetuated.

47. While parting with the judgment, this Court feels disgusted & pained at the way the events have unfolded in the present case pertaining to the issue in question inasmuch as, on the one hand Government has issued a Circular placing embargo on appointment in work charge establishment, nonetheless persons were continued to be engaged unabated in work charge establishment from time to time, the cut off date for regularisation was shifted through different notifications, however certain persons remain attached with the work charge establishment for a long period and were subsequently deprived of their service. Moreover, the action of the Govt. on the



one hand of closing down entry in the work charge establishment and on the other hand shifting the cut off date, for regularisation from time to time depicts a complete dichotomy in government policy. The Principal Secretary, Irrigation Department is directed to look into the matter, take remedial measures so that the people may not carry an impression that they have wrongly been treated by the respondents and further may not have any heart burning.

48. With the aforesaid observation and direction, both the writ petitions are dismissed.

(Shivaji Pandey, J)

I agree.

(Ahsanuddin Amanullah, J)

I agree.

(Mohit Kumar Shah, J)

Mahesh/-

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