

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16633 of 2018**

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1. Ram Yatan Singh S/o Shri Kedar Singh R/o Bhimbigha, P.S. Chhoti Jamaura, District- Nawada.
2. Md. Akhtar, S/o Sheikh Khudus, R/o Piro, P.S. Piro, District Bhojpur.
3. Madan Prasad Singh, S/o Shri Devi Dayal Singh R/o Village- Bhithi Shahbuddin, P.S.- Baniapur, District Saran.
4. Manoj Kumar, S/o Sri Suresh Prasad Singh R/o Losghani, P.S. Surajgarha, District- Munger.
5. Ravindra Kumar S/o Shri Mahendra Narayan Singh R/o Village- Galimpur, P.S. Kharagpur, District- Munger.
6. Md. Rizwan S/o Md. Yunus R/o Kaboli, P.S. Raipur, District Muzaffarpur.
7. Mahesh Prasad S/o Shri Ramdeen Prasad, R/o Village- Pakridih, P.S. Amnor, District- Saran.
8. Deena Paswan, S/o Late Mangal Paswan, R/o Village- Saidpur, P.S. Fathua, District- Patna.
9. Awadesh Tiwary, S/o Shri Nageshwar Tiwari, R/o Village- Hetanpur, P.S. Danapur, District- Patna.
10. Mahendra Ram S/o Shri Motilal R/o Mohalla- East Lohanipur, P.S. Kadamkuan, District- Patna.
11. Vinod Kumar Sinha, S/o Shri Yogendra Prasad, R/o Village- Chhoti Marai, P.S. Hajipur, District- Vaishali.
12. Umesh Ram, S/o Late Dwali Ram, R/o Kadamkuan, P.S. Kadamkuan, Town and District- Patna.
13. Md. Moinuddin Ansari, S/o Md. Sahabuddin Ansari, R/o Banwalia, P.S.- Bihia, District- Bhojpur.

... .. Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
3. The Principal Secretary, Ministry of Personnel and Administrative Reforms, Government of Bihar, Patna
4. Engineer-in- Chief, Public Health and Engineering Department, Government of Bihar, Vikas Bhawan, New Secretariat Patna.
5. Zonal Chief Engineering, Public Health and Engineering Department, New Secretariat, Patna.
6. Superintending Engineer, Public Health and Engineering Department, New Secretariat, Patna.
7. Executive Engineer, Public Health and Engineering Division, Patna (East).

... .. Respondents

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**Appearance :**

For the Petitioners : Mr.Ravi Kumar, Adv.



For the State : Mr. Bijoy Kumar Singh, AC to AAG-V

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 29-11-2022**

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

2. The petitioners are aggrieved by disengagement of their daily wages services under order dated 15-05-2018 by the Executive Engineer, Public Health Division, Patna East, Patna. The same has been issued assigning a reason that the petitioners have neither been appointed based on any judicial order nor their appointment is by a competent Authority. Relying upon Clause 2(1) and Clause 05 of the Resolution, dated 16-03-2006, bearing No. 639, as contained in Annexure- P5 to the writ petition, the action is stated to have been taken as per the impugned order.

3. The learned counsel for the petitioners submits that in terms of the very same resolution No. 639, the petitioners' claim for regularization was earlier considered. They were not allowed regularization by assigning a reason that in the Panel prepared for the purpose of regularization, they were not found to be within the zone of consideration having regard to the petitioners' seniority and limited number of vacancies. Such reason has been assigned by an order dated 09-09-2013, issued by the Department of Public Health Engineering, as contained in Annexure-P7 to the



writ petition. The submission is that the reason which has now been assigned in support of their disengagement in the impugned orders dated 15-05-2018 is clearly untenable and cannot be reconciled with the earlier order dated 09-09-2013, rejecting their claim for regularization,

4. The learned counsel for the State, on the other hand, submits that the impugned order has been issued under Clause 2(1) and 5 of Resolution No. 639. The petitioners have never assailed the departmental order dated 09-09-2013 denying their claim for regularization. He, therefore, submits that the order, being in accordance with Resolution No. 639 and in view of the admitted position that the petitioners have not challenged the departmental order dated 09-09-2013, the petitioners' claim is not tenable.

5. Considering the rival submissions, this Court would find substance in submissions of the learned counsel for the petitioners. The fact that the petitioners have not challenged the departmental order dated 09-09-2013 does not, in any way, come in the way of the petitioners' assail to the present order dated 15-05-2018. The departmental order dated 09-09-2013 was rejecting their claim for regularization whereas by the instant impugned order dated 15-05-2018, the petitioners are sought to be disengaged from their daily wages services. The reason assigned in



the present impugned order that the petitioners were not appointed by the competent Authority or in accordance with any judicial order, is clearly untenable since the departmental order dated 09-09-2013 shows that the petitioners were considered for regularization and were denied the same only because of the limited number of vacancies and their seniority position in the Panel prepared for regularization.

6. The order dated 09-09-2013, however, crystallizes the petitioners' eligibility for being considered for regularization, inter parties. It is different matter that they were not regularized for want of vacancies *vis-a-vis* the petitioners' seniority position in the panel prepared for regularization, being below others who were regularized. The same has neither been challenged by the petitioners nor ever disputed by the State. If the petitioners appointment was not by a competent Authority, or illegal for any reason whatsoever, they would not have been considered for regularization. It is an admitted position that they were not denied regularization on ground of their engagement on daily wages being illegal for any reason/s whatsoever. The reason assigned in the order dated 15-05-2018, is thus clearly untenable.

7. The submission regarding impugned order being based on Clause 2(1) and 5 of the Resolution No. 639 is also of no



avail to the State. Clause 2(1) read with Clause 5 of Resolution No. 639 prescribes a mode for disengaging persons on daily wages which clearly has not been followed, as is manifest from bare reading of order dated 15-05-2018. Clause 2(1) and Clause 5 are being reproduced, and reads as follows:-

“(1) जो दैनिक वेतनभागी 11.12.90 के पूर्व से कम से कम 240 दिनों से कार्यरत है का कार्यरत रहे हैं वे नियमितकरण पर विचार हेतु योग्य होंगे । समेह "ग" के पदों पर कार्यरत ऐसे दैनिक वेतनभोगियों की नियुक्ति बिहार कर्मचारी चयन आयोग के माध्यम से विशेष सीमित परीक्षा के आधार पर की जायेगी। समूह "घ" में ऐसी नियुक्ति निम्नतम वेतनमान के पद पर समायोजना के आधार पर की जायेगी। परन्तु सभी मामलों में सिर्फ एक अवसर (One time opportunity) दिए जायेगी, जिसमें सफल नहीं रहने पर या रिक्ति की अनुपातकाल के कारण समायोजन नहीं होने पर ऐसे दैनिक वेतनभोगियों को इस संकल्प की कंडिका 5 में निहित प्रक्रियानुसार कार्यमुक्त कर दिया जायेगा।

5. यदि किसी विभाग / कार्यालय में रिक्ति नहीं हो तो ऐसे विभाग / कार्यालय में कार्यरत दैनिक वेतनभोगियों को विशेष परिस्थिति में उनके द्वारा लम्बी अवधि तक दैनिक मजदूरी पर कार्यरत रह जाने के आलोक में अनुकंपा के आधार पर विचार करते हुए उनके द्वारा दैनिक वेतनभोगी



कर्मों के रूप में पूर्ण किए गए वर्ष (जिस वर्ष में कम से कम 240 दिनों तक कार्य किया गया हो) के अनुसार प्रतिवर्ष के लिए 15 दिनों का नियमानुसार लागू पारिश्रमिक देकर हटा दिया जायेगा। परन्तु ऐसा पारिश्रमिक 20 वर्षों से अनधिक अवधि मात्र के लिए देय होगा ।"

8. If the Authorities proposed to adopt the procedure for disengagement prescribed in Clause 2(1) read with Clause 5 of the Resolution 639, they could have done so, but the same, apparently, has not been done as is manifest from bare perusal of impugned order dated 15-05-2018.

9. The orders, therefore, passed in respect of the 13 petitioners, is clearly unsustainable, in fact, as also in terms of the Resolution 639 dated 16-03-2006, being without following the procedure prescribed in the same. The order dated 15-05-2018, passed by the Executive Engineer, Public Health Division, Patna East, Patna, as contained in Annexure-P1 series is, therefore, quashed.

10. The writ application stands allowed.

**(Madhuresh Prasad, J)**

shyambihari/-

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