

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11799 of 2018

1. Binod Ram Son of late Rajendra Ram R/o Village+ P.O.+ P.S. Rosera, District- Samastipur.
2. Bharat Bhushan Ram @ Bharat Bhushan Jamadar Son of late Manchan Ram R/o Village- Bhagwanpur Chak Shekhu, Ambedkar Nagar, P.O.+ P.S.- Dalsingsarai, Samastipur.
3. Binod Kumar Son of late Tarni Prasad R/o Village- Nikaspur Pachniyari Tola, P.O. Nikaspur, P.S. Tajpur, District- Samastipur.
4. Ram Pravesh Mahto Son of late Lakshman Mahto R/o Village+ P.O.- Sakarpura, P.S. Hasanpur Road, District- Samastipur.
5. Parikshan Kamati Son of late Mohan Kamati R/o Village- Atarbel, P.O. Kansi Simri, P.S. Singhwara, District- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Chief Secretary, Govt. of Bihar, Patna.
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Bihar, Patna.
6. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Bihar, Patna
7. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
8. The Superintending Engineer, Public Health Engineering Circle, Darbhanga.
9. The Executive Engineer, Public Health Division, Samastipur.

... .. Respondents

Appearance :

For the Petitioner : Mr. Siyaram Pandey, Adv.
For the State : Mr. Arvind Ujjwal, SC-4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 12-12-2022

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

2. The petitioners have assailed the order dated



19-05-2018, as contained in Annexure-9 to the writ petition, whereby and whereunder the petitioners' engagement on daily wages has been brought to an end. The impugned order is stated to have been issued under Clause- 5 of Resolution dated 16.03.2006, bearing Letter No. 639 (hereinafter referred to as 'Resolution No. 639').

3. The learned counsel for the petitioners submits that the petitioners' engagement on daily wages basis is since before the cut-off date (11.12.1990). The procedure prescribed in Clause 5 of Resolution No. 639, referred in the impugned order has not been followed.

4. Learned counsel for the State, on the other hand, submits, that a three Men Committee constituted pursuant to this Court's orders passed in CWJC No. 7359 of 2002 considered the petitioners' claim along with other aspirants for regularization in the Public Health Division, Samastipur. Category-wise seniority list was prepared based on Date of Birth, roster clearance and after following the reservation policy in light of Resolution No. 639. Seniority list was, thus, prepared and as per the same, the daily wager employees, based on seniority, have been recommended for regularization. The petitioners could not be regularized because they were below



those who were regularized from the seniority list. It is also stated that the process of regularization was a one time exercise and as per Resolution No. 639, those who could not be regularized, were to be removed from their daily wage services as per Clause 4 of Resolution No. 639.

5. Upon considering the rival submissions and going through the records, this Court would find that the respondents have admitted in the counter affidavit that petitioners were engaged as daily wager in between the year 1979 to 1983. The fact of petitioners being engaged on daily wages prior to cut-off-date is not in dispute.

6. Clause 5 of Resolution No. 639, which has been relied upon in the impugned order for disengaging the petitioners, reads as follows:-

“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 रहे जाने के आलोक में अनुकम्पा 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 ।”



7. It is manifest from bare perusal of the impugned order dated 19-05-2018 that the process envisaged under Clause 5 has not been followed. The fact that the petitioners were below in the zone of consideration for regularization in the seniority list prepared in the year 2006, as stated in paragraph No. 18 of the counter affidavit, is not denied or disputed by the learned counsel for the petitioners. The stand regarding the petitioners being beyond the zone of consideration, therefore, does not require any interference.

8. The third reason assigned in support of the petitioners disengagement is based on Clause 4 of Resolution No. 639, which reads as follows:-

"4. दिनांक 11.12.1990 के बाद कार्य पर रखे गये सभी प्रकार के दैनिक वेतनभोगियों को इस संकल्प के निर्गत की तिथि से एक माह के अन्दर हटा दिया जाएगा । ऐसा नहीं करने पर तथा तत्संबंधी भुगतान किए जाने पर उसकी वसूली संबंधित कार्यालय प्रधान के वेतन से की जाएगी । साथ ही दैनिक वेतनभोगियों को मजदूरी भुगतान के संबंध में जो विपत्र कोषागार को भेजा जायेगा उसमें निकासी एवं व्ययन पदाधिकारी द्वारा प्रमाण-पत्र दिया जायेगा कि दिनांक 11.12.90 के बाद कार्य पर रखे गये दैनिक वेतन भोगियों की मजदूरी भुगतान की राशि प्रस्तुत विपत्र में सम्मिलित नहीं है ।"

9. The justification based on Clause-4 is unacceptable as it is not a reason assigned in the impugned order dated



19-05-2018. Assigning of additional reasons by way of counter affidavit is clearly impermissible. The law is clear that an order has to be considered on the basis of the reasons assigned in the order. This legal issue stand settled by a decision of the Apex Court in the case of *Mohindhr Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Others reported in (1978) 1 SCC 405*.

10. Even otherwise, from bare reading of Clause -4, it appears that it is applicable only to those daily wager, who were engaged subsequent to the cut-off-date, which does not apply to the petitioners. The reason based on Clause 4 of the Resolution No. 639, therefore, is also not tenable.

11. In view of consideration above, the impugned order dated 19-05-2018, bearing Letter No. 760, issued by the Executive Engineer, Public Health Division, Samastipur, is unsustainable and is hereby quashed. The Authorities, however, would be at liberty to proceed in accordance with Resolution No. 639, in terms of the procedure taken note of above.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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