

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.760 of 2018

In

Civil Writ Jurisdiction Case No.5827 of 2016

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Paras Mistry S/o Late Jaldhar Mistry R/o village - Kaujia, P.O. P.S. Maudar,
District - Ranchi, Jharkhand

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Addl. Secretary, Water Resources Department, Govt. of Bihar, Patna.
5. The Engineer in Chief, Water Resources Department, Govt. of Bihar, Patna
6. The Chief Engineer, Water Resources Department, Nawada Division, Nawada.
7. The Chief Engineer, Water Resources Department, Bhagalpur Division, Bhagalpur. . null null
8. The District Magistrate, Nawada.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mithilesh Kumar Upadhyay, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG 4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-11-2022

Re: I.A. No. 2 of 2022

Heard I.A. No. 2 of 2022 for condonation of delay in filing
L.P.A. For the reasons stated in the application and affidavit, delay
of 15 days in filing L.P.A. stands condoned.



2. I.A. is allowed.

3. The matter was argued for some time. Learned counsel for the appellant seeks permission to withdraw this L.P.A. and approach the concerned authority.

4. If the appellant approaches the concerned competent authority in respect of grievance of the appellant, the same shall be examined in the light of the Apex Court's decision in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in (2006) 4 SCC Page 1.

5. Order of the learned Single Judge would not come in the way of deciding the appellant's grievance afresh in the light of the Apex Court's decision cited *supra*. At this juncture, learned counsel for the appellant insisted for deciding the present appeal on merits.

6. In the instant appeal, appellant has prayed for the following relief/reliefs:

“That this appeal is being preferred against the order dated 5/4/2018 in CWJC No. 5827/16 passed by Hon'ble Mr. Justice Jyoti Saran whereby and where under Hon'ble Single Judge without appreciating the materials on record as well as without considering the fact that in view of initiative taken by the State Government final list for selection was made and hence no delay was attributed to the Appellant rather State Government has kept matter pending for consideration but Hon'ble Court has erred in appreciating those things and has illegally rejected



the writ petition on wrong notion and / or for any other order / orders may be passed in the facts and circumstances of the case.”

7. The appellant is stated to have been appointed as a daily wager in the then Irrigation Department on 01.01.1982 among others. His services were retrenched on 31.03.1995. He did not agitated that his retrenchment is illegal. On the other hand, he has accepted the retrenchment dated 31.03.1995.

8. The State Government has evolved policy decision to regularize such of those persons who have rendered 240 days as a daily wagers, their services were regularized as a one time major. Pursuant to the policy decision of the State Government dated 16.03.2006, State Government issued order of regularization on 07.03.2007 and in the year 2009. Further, about 169 posts were stated to have been shown as vacant for the purpose of regularization of daily wagers on 07.01.2011. Even the aforesaid vacant posts were stated to have been filled up on 14.12.2011, some of the persons whose services have not been regularized approached this Court and their writ petitions were decided on 18.12.2014. Order of this Court was stated to have been implemented. Hence, the appellant invoke writ jurisdiction in the year 2016 in filing C.W.J.C. No. 5827 of 2016, it was disposed off on 05.04.2018. Hence, the present L.P.A.



9. Learned counsel for the appellant vehemently contended that in not regularizing appellant's services on par with others when he was similarly situated person on par with the such of those persons whose services have been regularized pursuant to the policy decision dated 16.03.2006 read with various orders of appointment issued to similarly situated persons from 2007 to 2014. The aforesaid contention has not been appreciated by the learned Single Judge in its order dated 05.04.2018 and the same is required to be examined in the present L.P.A.

10. Heard learned counsel for the appellant.

11. The appellant was appointed as a daily wager on 01.01.1982 and his services were retrenched on 31.03.1995. Therefore, he had a cause of action in the year 1995 in challenging the retrenchment in accordance with law. Such remedy has not been availed by the appellant. After one decade from the date of retrenchment the State Government evolved policy of regularization of such of those daily wagers who have rendered 240 days of service, they are entitled to regularization. The aforesaid policy decision is issued as a one time major. The aforesaid policy decision has been implemented in batch from 2007 to 2011. Thereafter, some of the persons whose services have not been regularized, they have invoked remedy under



Article 226 of the Constitution in filing writ petition and it was disposed of in their favour on 18.12.2014. The same has been implemented by the State Government.

12. At this juncture, that too after two years from the date of orders of this Court, appellant has filed C.W.J.C. No. 5827 of 2016 and it was decided on 05.04.2018 against the appellant. The appellant's contention that there is a discrimination meted out by the official respondent in not regularizing services of the appellant on par with the others whose services have been regularized from the year 2007 to 2014 and the same has not been extended and it is discriminatory and arbitrary. The aforesaid contention cannot be appreciated for the simple reason that appellant was a fence sitter. His services were retrenched on 31.03.1995. The policy of the State to regularize such of those persons who have rendered 240 days of daily wagers was issued on 16.03.2006 and the same was implemented up to the year 2014. Such benefit cannot be extended to the appellant having regard to the fact that he has slept over the matter.

13. Apex Court in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in (2006) 4 SCC Page 1 held that daily wager/*ad hoc* employee and similarly situated persons services could be regularized with certain conditions. In terms of



the conditions laid down by the Apex Court, the appellant do not fulfill one of the condition that as on particular date, daily wager must be in service. In the present case appellant was not in service as his services were retrenched on 31.03.1995. Further, it is to be noted that as and when Apex Court rendered decision on account of *Secy., State of Karnataka and Others vs. Uma Devi* reported in **(2006) 4 SCC Page 1**, the policy existing would stands wiped out for the reasons that Apex Court has specifically given various directions under what circumstances daily wager/*ad hoc* employee is entitled to regularization.

14. In the light of the above facts and circumstances, appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 05.04.2018 passed in C.W.J.C. No. 5827 of 2016. Accordingly, L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	15.11.2022
Transmission Date	

