

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.245 of 2019

In
Civil Writ Jurisdiction Case No.14601 of 2017

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Sumitra Devi Wife of Late Ram Narayan Mahto resident of C/o Dasai Mahto,
Mohalla - Dujra, P.O. G.P.O., P.S. Kotwali, District Patna.

... .. Appellant/s

Versus

1. The State of Bihar and Ors Bihar
2. The Principal Secretary, Water Resources Department, Bihar, Patna.
3. The Joint Secretary (Regional Establishment), Water Resource Department, Bihar, Patna.
4. Chief Engineer, Central Design, Research and Quality Control, Water Resource Department, Bihar, Patna.
5. The Superintendent Engineer, Dam and Gate Design Division, Water Resource Department, Bihar, Patna.
6. The Executive Engineer, Dam and Gate Design Division, Water Resource Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Gaurav Govind, Advocate
For the Respondent/s : Mr. Anjani Kumar (AAG-4)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-10-2023

The appellant herein is aggrieved with the dismissal of her writ petition, thus putting to naught her claims for regularization.



2. The petitioner had earlier preferred a writ petition numbered as C.W.J.C. No. 14074 of 2013 seeking for regularization reckoning her daily wage status for more than 10 years. She claimed regularization on the basis of her resolution passed on 16.03.2006 after consultation with the Trade Union. The consideration was directed based on the judgments of this Court in *Ashok Kumar Sharma v. State of Bihar (2006) 1 PLJR 232* and *Jai Kishun Ram v. State of Bihar (2016) 1 PLJR 512*.

3. The petitioner's representation was placed before the Chief Engineer, Water Resource Department, Patna, who rejected it by order dated 25.03.2017. It was found that the petitioner had not worked as a daily wager for 5 years consecutively before the cut off date of 11.12.1990. The petitioners claim that similarly placed persons were regularized in service pursuant to resolution of 2006, was found to be incorrect, since those 22 persons regularized were persons who had serviced as daily wager for more than 1000 days prior to the cut off date.

4. The learned Single Judge specifically emphasized the decision rendered in *Secretary, State of*



Karnataka v. Uma Devi and the further decision of a Full Bench of this Court in ***Ram Sevak Yadav v. State of Bihar (2013) 1 PLJR 964***; wherein, following *Uma Devi (supra)*, it was held that there can be no regularization unless it falls under the category as permissible under *Uma Devi (supra)* since otherwise it would lead to regularization of back door appointments, which is completely prohibited. The order of the Chief Engineer, Water Resources Department was hence, upheld. The learned counsel for the appellant pointed out that the appellant had continuous service from 16.09.1982. It was also pointed out from the earlier judgment produced as Annexure-17 in the writ petition that this fact was not denied by the respondent-State. The appellant, hence, is entitled to regularization, is the contention raised.

5. Learned AAG pointed out from Annexure-17 that even at the earlier point, the specific contention of the State was that her employment was as a part time sweeper, which is not akin to a daily wager. The specific resolution of 2006 permits only daily wagers, who have been employed at least for 240 days in every year in the



consecutive 5 years prior to the cut off date can be regularized. Specific reliance is also placed on Annexure-A produced along with supplementary counter affidavit dated 17.04.2023 filed on behalf of respondent Nos. 4-6.

6. We have looked at the translation of the resolution dated 16.03.2006. A plan was prepared by a Committee appointed by the State Government to regularize the daily wage employees against the vacancies available in the Government services. Clause 2(1) provided for regularization of daily wage employees who have worked for at least 240 days in the consecutive 5 years just prior to 11.12.1990. The Group C posts were to filled up on the basis of Special Limited Examination conducted by the SSC and Group D posts; at the minimum of pay-scale, to be done on the basis of adjustment. It was also stipulated that the opportunity shall be confined to a solitary instance. If the Group C aspirants failed to be successful in the examination or the adjustment of Group D aspirants found to be not possible at the first instance, on the ground of non-availablity of vacancies, then the daily wagers would be laid off as per the procedure contained in Para 5. Clause 3 (1)



also stated that the adjustment of as daily wage employees in the Group D posts would be determined on the basis of their work for a minimum of 240 days every year continuously for at least 5 years prior to the cut off date.

7. The learned counsel for the appellant also referred to the earlier order dated 14.03.2023 in the present appeal, wherein the Executive Engineer who filed the counter affidavit was directed to be present. In the presence of the Executive Engineer, the Division Bench had passed another order dated 21.03.2023, wherein it was directed that a speaking order will be passed with reference to the service particulars of the appellant read with the principles laid down by the Apex Court in the judgments in ***Uma Devi and State of Karnataka v. M.L. Kesari (2010) 9 SCC 247***. The conditions referred to from the decision cited was that (i) there should be a sanctioned post, (ii) the workers should be working for more than 10 years, (iii) the appointments should not be illegal, even if it is irregular and the employee should not have been working under the umbrella of any order of a Court of law.

8. Annexure-A produced along with the



supplementary counter affidavit dated 17.04.2023 of respondent Nos. 4-6 specifically dealt with this issue. The service details of the appellant is available in a tabulated form. The appellant between 16.09.1982 and 13.06.1989 was employed as a part time sweeper. She was made a daily *majdoor* only from 01.08.1989. Hence, as on the cut off date which is 11.12.1992, as per the resolution dated 16.03.2006, the petitioner had only a little more than 1 year service as a daily wager. The petitioner's prior service was a part time sweeper, which cannot be reckoned for the purpose of regularization of daily wagers.

9. The order passed in compliance of C.W.J.C. No. 14074 of 2013 was based on *Uma Devi (supra)* in which the Hon'ble Supreme Court frowned upon irregular appointments being made and continuation for long periods. The only concession provided was to regularize those persons who had continued for more than 10 years whose appointments were not illegal, even if they are irregular. We cannot but observe that in the present case there is a decision by the Government to regularize all daily wagers who have been engaged consecutively for 5 years, for a



minimum of 240 days in every given year. Hence, 10 years is not necessary but only 5 years as per the decision of the Government in 2006. But the appellant did not have the necessary service as a daily wager; she having been made a daily wager just one year back. This has been specifically noticed by the order now passed and produced at Annexure-A on the clear directions issued by the another Division Bench in this very same appeal. We find absolutely no reason to entertain the appeal and dismiss the same upholding the judgment of the learned Single Judge on the further reasoning provided herein, which is also on the basis of the orders passed at Annexure-A.

10. The appeal stands dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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