

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24603 of 2013

1. Hemant Prasad Shahi Son Of Late Surendra Prasad Shahi Resident Of Village And P.O. Batra, P.S. Nanpur, District- Sitamarhi
2. Kamlesh Jha Son Of Sri Bhola Jha Resident Of Village And P.O. Dumri Kala, P.S. Majorganj, District- Sitamarhi
3. Awadh Kishore Thakur Son Of Late Ram Snehi Thakur Resident Of Village- Bangara, P.O. Awari, P.S. Sadar Ghat, District- Madhubani
4. Ram Narayan Roy Son Of Late Ganeshi Roy Resident Of Village And P.O. Dadri, P.S. Nanpur, District- Sitamarhi
5. Ajay Kumar Singh Son Of Sri Bindeshwar Singh Resident Of Village And P.O. Dumri Kala, P.S. Majorganj, District- Sitamarhi
6. Ashok Kumar Verma Son Of Late Krishnadeo Prasad Verma Resident Of Village And P.O. Akhta, P.S. Supi, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors Government Of Bihar, Patna
2. The Principal Secretary, Animal Husbandry Department, Government Of Bihar, Patna
3. The Director, Animal Husbandry Department, Government Of Bihar, Patna
4. The Regional Director, Animal Husbandry Department, Muzaffarpur Region, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar -Manglam
For the State	:	Mr. Md. Ebadur Rahman Shakeb, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 13-07-2023

1. The present writ petition has been filed seeking the following reliefs:-

“(i) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter contained in memo no.500 dated 26.06.1996, memo no.415 dated 26.06.1996,



memo no.403 dated 26.06.1996, memo no.414 dated 26.06.1996, memo no.411 dated 26.06.1996 and memo no 405 dated 26.06.1996 issued under the signature of the Respondent no.4 whereby and whereunder the services of the petitioners were terminated on the ground that the petitioners were appointed by the Regional Director,. Animal Husbandry after 29.10.1991 though after 29.10.1991 the power of appointing authority vested in the Regional Director was withdrawn by the State Government.

(ii) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to consider the petitioners' case for regularization in service in view of the Circular of the State Government issued under letter no.489 dated 10.05.2005 whereby and where under in supersession of all previous circulars on regularization of daily wagers in regular service, the State Government had issued direction for regularization of those daily wagers, who had completed 240 days as a daily wager before 11.12.1990.

(iii) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for payment of salary of the petitioners for the period in which they were in service before the



termination order was passed but they were not paid their salary by the Respondents because of a show-cause notice for termination of their services.”

2. The learned counsel for the petitioner, Shri SBK Mangalam, has submitted that the petitioners were appointed in between the period 1988 to 1991. It is further submitted that all the petitioners were appointed before 20.10.1991, the date when the power of the Regional Deputy Director, Animal Husbandry was withdrawn to make appointment, however, it is submitted that since prior to the said date, the Regional Deputy Director, Animal Husbandry Department, Muzaffapur was competent to make appointment, hence the appointment of the petitioners are valid and the same has also been extended from time to time. It is also submitted that in view of the Government Circular No.489, dated 10.05.2005, the petitioners are entitled to be considered for regularization/absorption and with regard to this aspect of the matter, the learned counsel for the petitioners has relied on a judgment passed by a co-ordinate Bench of this Court dated 08.07.2013, in CWJC No.7542 of 1996, ***Nawal Kishore & Ors vs. the State of Bihar & Ors***, relevant portion whereof is being reproduced hereinbelow:-

“Mr. S.B.K. Manglam appearing for



the petitioners submits that from the Counter affidavit itself it is clear that when initially the petitioners were appointed in the year 1981-1989, the Regional Deputy Director, Animal Husbandry Department, Muzaffarpur was competent to make appointment. This is apparent from Annexure A to the counter affidavit wherein this power to appoint in being withdrawn with effect from 28th October, 1991. Thus the petitioners were appointed by the valid authority, whose appointments were extended from time to time. Then mere regularization by him did not amount to fresh appointment. In my view this may not be correct for the simple reason that the appointment letters issued to the petitioners specifically directed that they were appointed for a period of six months. Thus, when it is renewed, renewal is nothing but a fresh appointment. Thus, on expiry of last period of six months, after 20th October, 1991, the Regional Deputy Director had no authority to further renew and in other words to regularize. Taking another view of the matter would begin the very object of the notification dated 28th October, 1991. Mr. Mangalam then submitted that in the writ petition in various paragraphs it is stated that the petitioners worked for over 240 days continuously prior to 1990. He submits that their appointments were of the year 1981-89. It is not disputed that there



were no break. In the counter affidavit there is no denial of these facts. Thus, Mr. Mangalam submits that in view of Government Circular no. 489, dated 10.5.2005 they were entitled to be considered for regularization/absorption. In fact, most of them had worked for almost eight years.

Learned counsel for the State submits that if the initial appointment is itself illegal, it does not give any right to an employee to be regularized as well as the proposition of law is correct but if in the present case the State itself issued circular condoning the illegality in initial appointment and processing to regularize such appointees, the State cannot be stopped from doing so. Thus, in my view in view of the Circular of the year 2005, as referred to above, the petitioners are liable to be considered for regularization.

This writ petition has been pending in this Court since 1996 and the petitioners having been terminated are on road. Under such circumstances, in view of Government's own decision aforesaid I direct the Principal Secretary, Animal Husbandry Department, Govt. of Bihar, Patna, to take appropriate action in accordance with law for consideration of petitioners' case in terms of Circular of the Government aforesaid.

In view of long delay in the matter it



is expected that the Principal Secretary, Animal Husbandry Department, Govt. of Bihar, Patna would look into the matter and would see that the reliefs to which the petitioners are found entitled, are not denied further. The process must be completed within a period of four months from the date of production of a copy of this order before him.

With the aforesaid observations and directions, the writ petition is disposed of.”

3. The learned counsel for the respondents has not disputed the fact that the present case is squarely covered by the judgment rendered by a co-ordinate Bench of this Court in the case of **Nawal Kishore** (supra), hence, this Court deems it fit and proper to dispose off the present writ petition in similar terms.

4. Accordingly, the Principal Secretary, Animal Husbandry Department, Government of Bihar, Patna is directed to take appropriate decision, in accordance with law, with regard to the case of the petitioners for regularization/absorption, in terms of the aforesaid circular of the State Government dated 10.05.2005, within a period of six weeks of the petitioners filing appropriate representation, annexing a copy of this order.



5. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2023
Transmission Date	NA

