

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1051 of 2019

In

Civil Writ Jurisdiction Case No.428 of 2019

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Shobhnath Kumar @ Shobhnath Kumar Yadav, Son of Nithali Singh @ Bijay Singh, Permanent Resident of Village and P.O.- Barnaw, District- Bhojpur at Ara presently residing at Mohalla- Bandhan Tola, P.S. Ara Nawada, P.O.- GPO Ara, District- Bhojpur at Ara.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
2. The Under Secretary Public Health Engineering Department, Government of Bihar, Patna
3. The Engineer in Chief Public Health Engineering Department, Government of Bihar, Patna
4. The Superintendent Engineer, Public Health Engineering Department, Sasaram Circle
5. The Executive Engineer, Public Health Engineering Department, Sasaram Circle
6. The Assistant Engineer, Public Health Engineering Department, Bhojpur, Ara
7. The District Magistrate Bhojpur, Ara

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ram Kumar Singh, Advocate

For the Respondent/s : Mr.S.Raza Ahmad (AAG-5)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-08-2023

1. The appeal is against a judgment refusing to issue directions for continuance of the appellant on daily wages; which was held to be dependent on the nature of work existing in the establishment. As far as the claim for daily wages due to



him for the period between 11.11.2013 to 27.07.2014, the claim was directed to be looked into by the authorities on a representation to be filed by him within two weeks. In appeal, the learned counsel would strenuously argue for regularization pointing out that even the juniors appointed as daily wagers were continued in employment. Learned counsel would also place reliance on a judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 4443 of 2021 dated 26.07.2021; Vice Chancellor Anand Agriculture University v. Kanubhai Nanubhai Vaghela and Anr.*** Therein the litigation with respect to regularization of daily wagers had a chequered carrier. At the first instance, when it reached the Hon'ble Supreme Court, it was disposed of by a decision in ***Gujarat Agricultural University v. Rathod Labhu Bechar and Others; (2001) 3 SCC 574.*** Later on, similarly situated regular workers approached the High Court which allowed the claim upon which the instant SLP was filed before the Hon'ble Supreme Court. A contention was taken that the decision in ***Secretary, State of Karnataka and Others v. Umadevi (3) and Others; (2006) 4 SCC 1*** overruled the decision in ***Gujarat Agricultural University*** (supra). Their Lordships in the cited decision held that in ***Gujarat Agricultural University*** (supra), the Hon'ble Supreme Court



had approved the proposed scheme of the State of Gujarat and directed regularization of all those daily wagers who were eligible in accordance with the scheme, phase-wise. It was held that the right to be regularized in accordance with the scheme continues till all the eligible daily wagers are absorbed. It was also found that creation of additional post for absorption was staggered by the Hon'ble Supreme Court permitting the appellant and the State of Gujarat to implement the scheme phase-wise. It was found that though *Umadevi (3)* (supra) in Paragraph 54 held that any judgment which is contrary to the principles settled therein would be denuded the status of a precedent; the binding nature of the decision in *Gujarat Agricultural University* (supra) would continue to apply in so far as the parties to the said judgment are concerned. Hence, the Hon'ble Supreme Court in the aforesaid judgment only ruled on the binding nature of the earlier judgment, inter parties. The earlier judgment cannot have the sheen of a precedent nor does the cited decision have a binding nature especially when it proceeded on the basis of the approval by the Hon'ble Supreme Court of the scheme of regularization, framed by the State.

2. We find no parallel in the aforesaid case in which the appellant was appointed as a daily wage employee in the Ara



Municipal Corporation on 19.11.1997. Twice, a panel was prepared for Pump Operators in the year 2013 and 2014 wherein the appellant's name figured. The appellant's contention is that since he had asked for the wages which remained unpaid between 2013 to 2014, he was terminated. The writ petition was filed in the year 2019. The claim was also for payment of arrears of wages between 11.11.2013 to 27.07.2014. There is nothing stated in the writ petition as to the date up to which the appellant was continued as a Pump Operator. There is also nothing produced in the writ petition to establish his continuance between 2013 and 2014. The mere reason that the appellant's name figured in the panel prepared by the Municipality, for Pump Operators, does not evidence the fact of appointment or continuance.

3. We find no reason to entertain the appeal and fully agree with the decision of the learned Single Judge. The decision cited by the appellant is not at all applicable. The mere appointment as a daily wage employee does not create any right for regularization. The appointment as a daily wage employee is also not pleaded or substantiated as carried out in a sanctioned vacancy, by following the due procedure for appointment which includes a public advertisement. We are of the opinion that **Umadevi (3)**



(supra) squarely applies in the case of the appellant and there can be no claim of regularization. Gross delay also stands against the claim raised by the appellant.

4. The appeal would stand dismissed.

5. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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