

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.399 of 2018

In
Civil Writ Jurisdiction Case No.12 of 2017

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1. Banaras Prasad, Son of Sri Dahu Mahto, resident of village Bhagwanpur, Pachwara, P.O. Bargaon, P.S. Nalanda, District Nalanda.
 2. Sukhdeo Rai, Son of late Dalo Rai, resident of village Garmatari, Post Office Bahamra, P.S. Banka, District Banka.
 3. Sattan Yadav, Son of Jogeshwar Yadav, resident of village Jawaharipur, P.O. Tilka Manjhi, P.S. Kotwali, District Bhagalpur.
 4. Kedar Prasad, Son of late Janki Mahto, resident of village Lodipur, P.O. Hulasganj, P.S. Hulasganj, District Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Government of Bihar, Patna
2. The Chief Engineer, Water Resources Department, Bhagalpur.
3. The Superintendent Engineer, Irrigation Circle, Bhagalpur.
4. The Superintending Engineer, Ganga Pump Canal Circle, Bhagalpur.
5. The Executive Engineer, Irrigation Division, Bhagalpur.
6. Suresh Prasad Sah, S/o Sri Padarath Sah, R/o Village Baidadih, P.O. Ramchandarpur, Itahari, P.S. Amarpur, District- Banka.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prakash Sahay, Advocate Mr. Sudhir Kumar, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4 Mr Deepak Sahay Jamuar, AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 15-03-2023

The Challenge in the present Letters Patent Appeal is
to the order/judgment dated 01.12.2017 passed by the learned



Single Judge in C.W.J.C. No. 12 of 2017, wherein the prayer of the writ petitioners-appellants herein for regularization of their services with effect from the date of initial appointment has been turned down.

2. Undisputedly, all the four appellants have been regularized in service vide order as contained in Memo No. 646 dated 04.03.2016 issued by the Chief Engineer, Water Resources Department, Bhagalpur. However, being aggrieved to the extent whereby the order makes the regularization prospective and not from the date of their initial appointments or at least with effect from 01.02.1999 when they were granted minimum scale of pay to Class-IV employees in the light of the judgment and order passed by this Court in a batch of writ petitions vide C.W.J.C. No. 12 of 2017.

3. Before considering the propriety of the order under appeal, the matrix of the fact for proper appreciation of the issue is/are that the writ petitioners-appellants were working on daily rate worker under Water Resources Department and they were getting wages on daily rate basis since their engagement. Since the writ petitioners have been continuously working on daily rate for several years, but their cases could not be considered for regularization approached before this Court for their



absorption/regularization. However, the writ petition having been dismissed by the learned Single Judge, some of the petitioners and others filed different Letters Patent Appeal, which was disposed of vide order dated 18.09.1996 with the direction that “the appellants and all other similarly situated employees should be paid their salary in the lowest stage of the time scale of pay admissible to the respective posts on which they are working.” Later on, after series of litigation by different daily rate workers, the writ petitioners-appellants have also been allowed minimum time scale of pay vide order dated 16.06.1999. Subsequently, on being aggrieved by the inaction on the respondents-State authority in not taking steps for regularization of writ petitioners-appellants, the writ petitioners-appellants again knocked the door of this Court in C.W.J.C. No. 1373 of 2014, which was disposed of on 13.02.2015 with a direction to the Chief Engineer, Water Resources Department to consider their claim for regularization and for passing appropriate order. Whereupon, the order bearing Memo No. 646 dated 04.03.2016 came to be passed, which order was assailed to the extent whereby the writ petitioners-appellants have been regularized from the date of their joining.

4. The learned Single Judge while considering the



case of the writ petitioners-appellants herein has been pleased to hold as follows:

“The issue argued by Mr. Sharma, learned counsel appearing for the petitioners stands answered in the judgment of the Supreme Court reported in (2005) 13 SCC 246 (Punjab State Electricity Board Vs. Swaran Singh) wherein it has been held that normally regularization would be prospective in effect and not from the date of initial appointment. Even otherwise the very circular under which these petitioners have been regularized i.e. circular dated 16.3.2006 very clearly stipulates that the order of regularization would be prospective in nature. The comparison made by the petitioner with the employees of the Work Charge establishment is thus totally out of context for the two cases have no parity.

In the circumstances discussed no cause for indulgence is made out. The writ petition is dismissed.”

5. The appellants have assailed the order of the learned Single Judge, *inter alia*, on the ground that the learned Single Judge, while adjudicating the writ petition failed to appreciate that the writ petitioners-appellants were granted minimum time scale w.e.f. 01.02.1999 and many juniors to the writ petitioners-appellants have been regularized much earlier. It is also the submission of the appellants that their cases are on



different footing and they claimed for regularization not merely based on their engagement as daily wager, rather they were getting minimum time scale and, as such, in any view of the matter their cases for regularization have not been considered in right perspective.

6. Before considering the aforesaid contentions made in the memo of appeal, it would be proper to emphasize that the concept of regularization presupposes irregular appointment at the first instance so as to enable the employer to regularize the employee. A three Judge Bench of the Hon'ble Supreme Court in the case of **State of Haryana and Others Vs. Jasmer Singh and Others (1996) 11 SCC 77**, held that the regularization of daily rated workmen, who had completed a certain number of years of service is a policy matter to be decided by the State. The Hon'ble Supreme Court held that the respondents, who are employed on daily wages cannot be treated on par with persons in regular service of the State holding similar posts. Daily rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment.

7. The issue of regularization was exhaustively considered by the learned Constitution Bench of the Apex Court



in the case of **Secretary, State of Karnataka and Others Vs. Uma Devi and others**, reported in **(2006) 4 SCC 1** and emphasizedly held that where the appointment had been made without following the procedure prescribed under the law, such person cannot seek regularization. The regularization should be made under the statutory rules and not otherwise. Casual Labour/Temporary employee cannot claim any right to regularize and permanence and it should be presumed that casual/temporary/contractual/ daily wage/ad-hoc employee have accepted the employment fully knowing the nature and the consequences following from it.

“It has further been clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”

8. Recently, the two judge Bench of the Hon'ble Supreme Court in the Case of **Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh and Others in Civil Appeal No. of 2023 (arising out of SLP (C) No. 10519 of 2020)** while considering a regularization matter has been pleased to hold that two conditions are must for regularization of daily wage employees; firstly, initial appointment must be done by the



competent authority and secondly; there must be a sanctioned post on which the daily rated employee must be working.

9. Now coming to the Resolution dated 16.03.2016, issued by the Personnel and Administrative Reforms Department, Bihar, Patna pertaining to regularization of daily wages workers engaged in different offices of the Government of Bihar, from bare perusal thereof, it appears that the said resolution speaks volume that the same is meant to provide one time opportunity of appointment to those daily wages workman, who qualified the conditions stipulated therein, with a clear understanding that in no circumstances the period of work rendered as daily wager shall be treated as service under the Government. Admittedly the aforesaid stipulation as contained in Clause 2(5) of the Resolution dated 16.03.2006 has never been assailed and the resolution being basis of regularization still holds the filed.

10. Since that stage has already crossed and the services of the writ petitioners-appellants have already regularized, hence the question of their regularization is not disputed herein. This Court would also observe that allowing the minimum pay scale admissible of Group 'D' post maintaining their daily wager status in compliance of the earlier orders of



this Court would not change the status of a daily wager on par with the regular employees. Further, the question of law involved in the present appeal whether the services of casual worker could be regularized with retrospective effect from the date of initial appointment was also dealt with by the Hon'ble Supreme Court in the Case of **Union of India and others Vs. Sheela Rani**, reported in **(2007) 15 SCC 230** and the Hon'ble Supreme Court has been pleased to hold that "the respondent was engaged as a casual worker and the nature of the job assigned to her was to note down the complaints in the enquiry office as a casual worker. The respondent has not placed any documentary evidence in respect of her claim nor any such evidence is available on record. The respondent's claim for regularization of her services from 17.11.1982 is not correct as the regularization of casual worker is covered under the relevant rules. The list of the casual workers already regularized shows that they had been engaged prior to the respondent." The Hon'ble Supreme Court while allowing the appeal set aside the judgment and order passed by the High Court as also the order of retrospective regularization passed by the Tribunal. Thus the regularization must take effect prospectively and not retrospectively, unless it is so provided under the statutory force.



11. What has been culled out from the aforesaid proposition of law that all the regularization is to be governed by the policy decision taken by the State; and in the present case as contained in Resolution no. 646 dated 16.03.2006, which specifically contemplates that the regularization is to be made with immediate effect and the services rendered earlier on daily wage basis will not be recognized as service under the State Government for any purpose in view of the provision contemplated in Clause 2 (5) of the aforementioned Government circular issued by the Personnel and Administrative Reforms Department.

12. Further the claim of the writ petitioners-appellants with regard to the persons junior to them have been regularized with retrospective effect, is duly considered by the learned Single Judge, and rightly been held that they were work charge employees and their regularization were done in tune with the resolution of the Finance Department bearing no. 5074 dated 20.09.1990 and 17.10.2013 and as the work charge employees had already given a temporary status under the circular, the writ petitioners-appellant herein cannot claim parity on par with the employees working under work charge establishment.

13. Having meticulously examined the materials



available on record, this Court does not find any ground for interference in the order/judgment dated 01.12.2017 passed by the learned Single Judge in C.W.J.C. No. 12 of 2017.

14. Accordingly, the present Letters Patent Appeal is hereby dismissed, sans any merit.

(P. B. Bajanthri, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	09.02.2023
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Transmission Date	

