

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1140 of 2018
In
Civil Writ Jurisdiction Case No.2181 of 2013

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1. The State Of Bihar through the Commissioner-cum-Secretary to Govt. Public Health Engineering Department, Bisheshwariaya Bhawan, Bailey Road, Patna
 2. The Chief Engineer Mechanical, Public Health Engineering Department, Bisheshwariaya Bhawan, Bailey
 3. The Superintending Engineer, Public Health Engineering Circle, Ara.
 4. The Executive Engineer, Public Health Division, Ara.

... .. Appellant/s

Versus

1. Shiv Shankar Choubey, son of Late Ram Janam Choubey, Resident of Village- Choubeypur, P.O.- Wambhawar, P.S.- Piro, District- Ara Bhojpur.
2. Gupteshwar Singh, Son of Late Kishuni Singh, Resident of Village, P.O.- Somranna, P.S.- Charpokhari, District- Ara, Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Ranjan, AC to AAG 5

For the Respondent/s : Mr. Lalan Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

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

Date : 03-01-2023

Re: I.A. No. 3 of 2022

Heard I.A. No. 3 of 2022 for condonation of delay of 182 days in filing L.P.A.

2. For the reasons stated in the application and affidavit, delay in filing L.P.A. stands condoned. Accordingly, I.A. No. 3 of 2022 stands allowed.

3. With the consent of learned counsels for the respective parties, matter is taken for final hearing.



4. Perusal of the records, it is evident that respondents' services were initially *ad hoc* and their services were regularized in the year 1987 – 1988 while extending regular pay scale attached to the post @ sum of Rs. 350- 425/- on 18.04.1988 pursuant to the policy decision of the State Government relating to absorption. Thereafter, time to time increments have been granted. Thereafter, abruptly appellants have taken a decision that respondents were not entitled to be absorbed/regularized and they were reverted from regular holder of post to that of daily wage employees in the light of State Government certain directions.

5. Feeling aggrieved by the action of the appellants, respondents invoked remedy under Article 226 in filing writ petition C.W.J.C. No. 2181 of 2013 and it was decided on 09.01.2018 in favour of respondents' employees. Hence, the present appeal by the State.

6. Learned counsel for the appellant State vehemently contended that learned Single Judge has committed error in not appreciating the factual aspects of the matter that the respondents are not entitled to regularization in terms of the State Government certain directions.

7. Per contra, learned counsel for the respondents submitted that there is no infirmity in the order of the learned



Single Judge dated 09.01.2018. It is further submitted that even to this day order of regularization has not been cancelled and what has been done is only asking the petitioners to hold daily wagers post instead of regularly holding the post of *Plumbing Khalasi*. It is further submitted that Apex Court in the case of ***Secy., State of Karnataka and Others vs. Uma Devi*** reported in ***(2006) 4 SCC page 1***, observations have been made that authorities cannot re-open the regularization issue.

8. Heard the learned counsels for the respective parties.

9. Undisputed facts are that respondents were initially appointed on daily wage basis to the post of *Plumbing Khalasi* in the year 1988 in terms of the State policy that if daily wagers who has completed five years of service is entitled to regularization. Accordingly, respondents' services were regularized in the year 1987 and pay was fixed in the year 1988 @ Rs. 350 – 425/-. Thereafter, certain directions was issued by the State Government dated 13.04.2002 *vide* Memo No. 2322 the respondents' services were reverted from regular holder of the post of *Plumbing Khalasi* to that of daily wagers.

10. Feeling aggrieved by the action of the appellants, respondents invoked jurisdiction of this Court in C.W.J.C. No. 706 of 2002. Thereafter, Division Bench decided the aforesaid writ



along with C.W.J.C. No. 7359 of 2002 vide order dated 13.07.2006. Division Bench directed to constitute committee of Secretaries to look into regularization matter with reference to Apex Court’s decision in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in *(2006) 4 SCC page 1*.

11. Despite various pronouncements, the appellants were sticking on their stand to the extent that respondents are not entitled to regularization. Apex Court in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in *(2006) 4 SCC page 1*, it is observed that such of those persons whose services have been regularized and the same cannot be re-opened to nullify their regularization. In the light of Apex Court decision there is no infirmity in the order of the learned Single Judge dated 09.01.2018. Accordingly, State LPA stands rejected.

12. Pending I.A., if any, stands disposed off.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.01.2023
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