

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.422 of 2024

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1. Bhushan Paswan Son of Shri Ramji Paswan, Resident of Village-Ward No. 8, Barawat Pasaraeen, Post-Barawat Pasraeen, Police Station-Bettiah Muffasil, District-West Champaran.
 2. Ranjeet Kumar, Son of Late Nathuni Mahto, Resident of Village and Post-Barawat Pasraeen, Police Station-Bettiah Muffasil, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Additional Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Secretary, Department of Rural Development, Government of Bihar, Patna.
4. The Commissioner, Tirhut Division, Muzaffarpur.
5. The District Magistrate, West Champaran, Bettiah.
6. The Sub Divisional Officer, West Champaran, Bettiah.
7. The Block Development Officer, Block-Bettiah, District-West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Gopal Krishan, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-12-2024

Heard Mr. Manoj Kumar, learned counsel appearing
on behalf of the petitioners and Mr. Gopal Krishan, learned
counsel appearing on behalf of the State.

2. The petitioners, in paragraph no. 1 of the present writ petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

“i) For issuance of writ in the nature of mandamus directing the respondents to make absorption of the services of petitioners in regular establishment as



both of them are continuously working on the sanction and vacant post of driver and their names have been forwarded for consideration in the year 2020-21 itself.

ii) For any other relief/ reliefs for which the petitioners are entitled for in the eye of law.”

Brief facts: -

3. The brief facts of the case are that the petitioners were engaged as daily wages on the sanctioned and vacant post of driver in the respective offices in the year 2011 and 2012 and the petitioners are performing their assigned duties as driver in the government establishment since 2011 and 2012 respectively. Their names finds place in the district panel for regularization/ absorption, but the same could not be finalized as yet, though there is a direction of the General administration, Government of Bihar contained in Memo. no. 639 dated 16.03.2006. A letter no. 5290 dated 03.05.2017 and other subsequent circulars (Annexure-P/1 and Annexure-P/7) were issued from time to time in compliance of the judgment of the Hon'ble Apex court as well as this court to make the absorption, but the efforts of the petitioners yielded no result.

Submissions: -

4. Learned counsel appearing on behalf of the petitioners submitted that the petitioners are seeking their regularisation, in view of the fact that the respondents have regularly taken work from them as driver. The petitioners have



valid driving license and they are also matriculated. The petitioners no.1 and 2, having all the requisite qualification, were appointed as driver in the year 2011 and 2012 respectively as per the terms and conditions of the notice inviting in the year 2011. A panel was prepared thereafter and the same was interfered by this Court in CWJC No.8425 of 2008 and other analogous matters for having not complying with the requirements, as laid down in the case of *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.*, reported in (2006) 4 SCC 1, and the subsequently in case of *Narendra Kumar Tiwary*, reported in, (2018) 8 SCC 238, and at the same time, the Court has also observed that the petitioners, who were working on daily wages, are entitled for equal pay for equal work in view of the ratio laid down by the Apex Court in the case of *State of Punjab and Ors. Vs. Jagjeet Singh and Ors.* reported in (2017) 1 SCC 148. Such observation has been made by this Court in CWJC No.8425 of 2008 vide order dated 20.02.2017. Referring to the several paragraphs of the counter affidavit and also referring to the particular information contained in paras-10, 11, 12 and 13 of the counter affidavit, learned counsel submitted that the petitioners, having complied with the requirement of the advertisement of the year 2011 and



also having uploaded soft copy of all the particulars in light of 2018 instructions and also in compliance of letter no.558 dated 04.12.2020 of the General Administration Department issued in compliance of order passed in CWJC No.18612 of 2019, also seek parity in view of the fact that similarly situated persons, aggrieved by the inaction of the respondents, were forced to file several writ petitions and the respondents have admitted the said fact in para-11 to the counter affidavit. Learned counsel, in above background, submitted that the petitioners must be considered forthwith for their regularization, in accordance with the law, as per their date of joining.

5. The learned counsel further submitted that the reliance on procedural formalities cannot be used to perpetually deny the substantive rights that have been accrued by the petitioner over a considerable period through his continuous service. The respondents have been taking work from the petitioner on regular basis on vacant positions and not regularization of the service of the petitioner is against the law laid down by the Apex Court in ***Vinod Kumar & Ors. Etc. Versus Union Of India & Ors., in, Civil Appeal Nos. 5153-5154 Of 2024 (Arising Out Of SLP(C) Nos.22241-42 Of 2016)***, has held that,

“4. The appellants have approached this Court



arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of Uma Devi (supra) to their situation.

5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the



importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappam [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

8. In light of the reasons recorded above, this



Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

9. Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment.

(Emphasis supplied)

6. *Per contra*, Mr. Gopal Krishan, learned counsel appearing on behalf of the State submitted that it is admitted that the steps have already been taken for regularizing the drivers, who are working in different establishments of the Government on daily wages. The law in respect of “regularisation” is no more *res integra*, as the Apex Court in case of ***Uma Devi (supra)*** and particularly in para-53 has taken note of the same. Since the entitlement of the petitioners has not been considered as yet in light of the law laid down by the Apex Court in case of ***Uma Devi (supra)*** and till date, the Committee constituted for considering the individual cases of the drivers, similar like the petitioners, has not given any recommendation, the writ petition is premature and is fit to be dismissed *in limine*.

7. Having considered the rival submissions made on



behalf of the parties, as well as, the admitted fact of the case is that it has not been denied in the counter affidavit filed by the respondents that work was regularly not taken from the petitioners. It is also admitted that in the year 2011 and 2012, the petitioners had applied for being regularised as per the terms and conditions of the advertisement and no action was taken till date. The General Administration Department, Government of Bihar issued a Memo no.5290 dated 03.05.2017 for issuing the guidelines in light of the order dated 20.02.2017 passed in CWJC No.8389 of 2008 in respect of regularisation of service of daily wagers (Class-III and Class-IV employees). However, a penal was prepared in the year 2018 and before that some similarly situated aggrieved persons have approached this Court by filing CWJC No.18612 of 2019 and the said writ petition was disposed of with a direction to the Additional Chief Secretary/ Principal Secretary, General Administration Department, Government of Bihar, Commissioner, Madadh Division, Gaya and the District Magistrate, Gaya to ensure that the process of selection through the advertisement in question is completed by adopting a fair procedure. The petitioners are having valid driving license, as on date and having performed their duty regularly, as per the requirement of respondent/s from the date



of their initial engagement and thereafter, they have been transferred from one government establishment to another, have made out a case for being considered for regularization in light of the law laid down in the case of *Uma Devi (Supra)*. The Authorities must not delay the process further in considering the regularization of the petitioners in accordance with law.

8. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2024
Transmission Date	NA

