

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5552 of 2020

1. Tunna Kumar @ Tunnu Kumar, Son of Ramkrishna Ram, Resident of - East Lohanipur, Pustkalya Lane, P.S. - Kadam Kuan District- Patna.
2. Raj Kumar, Son of Jitendra Ray, Resident of - Chandmari Road, Sakuntlaya Bhawan, P.S.- Kankarbagh, District- Patna.
3. Manju Devi, W/o Late Kanhaiya Lal Gupta, R/o- Azad Nagar, South Chandmari Road No. 1, P.S.- Kankarbagh, District- Patna.
4. Rahul Kumar, S/o - Rajendra, R/o- Satgharwa, B.M. Das Road, P.S. Pirbahore, District- Patna.
5. Raju Kumar, son of Rajendra Prasad, R/o- Salimpur Ahara, Gali No. 2, P.S.- Kadam Kuan, District- Patna.
6. Pawan Singh @ Pawan Kumar Singh, Son of - Late Rajendra Singh, R/o Village Judawanpur, P.S. Raghapur, District- Vaishali.
7. Jyoti Kumar, Son of - Prakash Ram, R/o Mohalla - Turha Toli, Anand Bazar, P.S.- Danapur, District- Patna.
8. Dharmendra Kumar, Son of Rajeshwar Prasad Singh, Resident of Village - Byapur, P.S.- Maner, District- Patna.
9. Deepak Ram @ Deepak Kumar, S/o Late Mohan Ram, Resident of Bus Paraw Road, Arrah, P.S.- Nawada, District- Bhojpur.
10. Khurshid Ahmad, S/o Manjur Ahmad, Resident of - Pakri Arra, P.S.- Nawada, District- Bhojpur.
11. Sachchidanand Singh, S/o- Tipan Prasad Singh, Resident of Village - Piprahiyan, P.S. - Arrah Muffasil, District- Bhojpur.
12. Prem Shankar Lal, Son of Sudeshi Lal, Resident of Village - Mokhlisa, P.S. Koelwar, District- Bhojpur.
13. Ajay Kuamr Ojha, Son of Satyanarayan Ojha, Resident of Village - Kataiya, P.s. Bihiyan, District- Bhojpur.
14. Akhilesh Kumar, Son of Sudama Singh, Resident of Village - Karkhiyan Banahi, P.S.- Tiya, District- Bhojpur.
15. Kumar Sameer, Son of Late Dadan Prasad, R/o Village - Badhani, P.S. Charpokhari, District- Bhojpur.
16. Satendra Kumar, Son of Late Washisth Narayan Singh, Resident of Mohalla - Tari Arrah, P.S. Town P.S., District- Bhojpur.
17. Md. Shahabddin, Son of Late Md. Ayub, Resident of Mohalla - Kazi Tola Arrah, P.S. Town P.s, District- Bhojpur.
18. Bablu Kumar Gupta, Son of - Kanhaiya Prasad Gupta, Resident of - Godna Road Toli Arrah, P.s. Nawada, District- Bhojpur.
19. Rupak Kumar Sinha, S/o late Madan Prasad, R/o Village - Basdila, P.S. - Gopalganj, District- Gopalganj.
20. Hareram Sah, Son of Prem Sagar Sah, Resident of Village - Harkholi, P.s. Mirganj, District - Gopalganj.



21. Munna Tiwari, Son of Subhash Chandra Tiwari, Resident of Village - Balesra, P.s. - Uchkagaon, District- Gopalganj.
22. Gopal Paswan, Son of Sri Rang Bahadur Paswan, Resident of Village - Baliyan Kothi, P.S.- Basriganj, District- Rohtas.
23. Nand Lal Paswan, Son of Sri Rang Bahadur Paswan, Resident of Village - Baliyan Kothi, P.S. Nasriganj, District- Rohtas.
24. Uma Shankar Pandey, Son of Rama Nand Pandey, Resident of Village - Nanho, P.S. Karakat, District- Rohtas.
25. Upendra Kumar Ojha, son of Rameshwar Ojah, Resident of Village - Ojhbliya, P.s. - Indrapuri, District- Rohtas.
26. Dharmendra Kumar, Son of Ramayan Prasad, Resident of Village and P.O.- Bikramganj, District- Bimrakganj.
27. Krishna Kumar, Son of Lal Mohar Singh, Resident of Village - Gajadhar Ganj, P.S. Buxar, District- Buxar.
28. Madhurendra Kumar Sharma, Son of Narendra Kumar Sharma, Resident of Mohalla - Bari Tola, P.s.- Buxar Town, District- Buxar.
29. Birendra Kumar Ray, Son of- Jadunath Ray, Resident of Village - Dumraon, P.s. Dumraon, District- Buxar.
30. Sikandar Ram, son of Yogendra Ram, Resident of Gyanisah Chouk Ratanpura, P.s.- Bhagwan Bazar, District- Saran.
31. Mukesh Kumar, Son of Sudesh Rawat, Resident of Village - Rampur, P.S.- Khaira, District- Saran.
32. Om Prakash, Son of Sukhdeo Prasad, Resident of Jay Prakash Nagar, P.S.- Bhagwan Bazar, District- Saran.
33. Sani Kumar, Son of Shatrughan Ram, Resident of - Gyanishah Couk Ratanpura, P.s.- Bhagwan Bazar, District- Saran.
34. Ganesh Prasad, Son of Late Bhola Prasad, Resident of Dahiyawan Mubarak Lane, P.S.- Town (Chhapra), District- Saran.
35. Md. Jalauddin, Son of Babib Miyan, Resident of Gudri Bazar, P.s.- Bhagwan Bazar, District- Saran.
36. Manoj Kumar, Son of Late Dharmnath Prasad, Resident of Rauza, P.s.- Chhapra, District- Saran.
37. Abhinav Kumar, Son of Chote Lal Manjhi, Resident of Dahiyawan, P.S.- Chapra Town P.S. District- Saran.
38. Awadhesh Kumar, Son of Chote Lal Manjhi, Resident of Daiyawan Mission Road, P.S.- Chapra Town P.S., District- Saran.
39. Narendra Kumar @ Narendra Singh, son of Janardan Singh, Resident of Village - Pahari Chak, P.S. Sanpur, District- Saran.
40. Khurshid Eqbal, Son of - Late Ash Mohammad, Resident of Gudri Bazar, P.S.- Bhagwan Bazar, District- Saran.
41. Manoj Kumar @ Manoj Sah, Son of Majistar Sah, Resident of Village - Kalhuan, P.S. - Karhaura, District- Saran.
42. Anita Kumari, Wife of Sunil Kumar Ram, Resident of Village - Chainpur,



P.S. Marhaura, District- Saran.

43. Vinay Kumar, Son of Bharat Singh, Resident of Village - Abhilaspur, P.S.- Bhabhua, District- Kaimur.
44. Ashok Prasad, son of Yamuna Prasad, Resident of Village - Ruppur, P.S.- Bhabhua, District- Kaimur.
45. Rajesh Kumar Goand, son of Kanhaiya Prasad Goand, Resident of Village - Takiya, P.s. Sasaram, District- Rohtas.
46. Kamal Kishor, Son of Vishwanath Prasad, Resident of Mohalla - Kotha Toli, P.s. - Sasaram, District- Rohtas.
47. Arvind Kumar, Son of - Late Gopal Singh, Resident of Mohalla - D.M. Colony, Fazalganj, P.S.- Sasaram, District - Rohtas.

... .. Petitioner/s

Versus

1. General Manager, L.I.C of India, Central Officer, Mumbai.
2. Sr. Zonal Manager, L.I.C. of India, East Central Zonal Office, Patna.
3. Sr. Divisional Manager, L.I.C. of India, Divisional Office-II, Patna.
4. Manager (P and IR) L.I.C. of India, Divisional Office- II, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate

Mr. Rakesh Kumar, Advocate

For the Respondent/s : Mr. Umesh Prasad Singh, Sr. Advocate

Mr. Rakesh Kumar, Advocate

Mr. Abhimanyu Vatsa, Advocate

Mr. Sameer Sawarn, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 08-10-2024

Heard Learned Counsel for the petitioners and
Learned Counsel for the Life Insurance Corporation of India.

2. The present writ petition has been filed for



quashing of the order dated 17.02.2020 issued by the Sr. Divisional Manager, D.O.-II, Patna by which the Branch Manager was directed to remove all the daily wagers engaged in the offices and who are getting wages in their own name or through N.E.F.T should be stopped forthwith and they should be brought under outsourced contractor (contained in Annexure -2). Further prayer has been made for a direction to the respondent authorities to regularize the services of the petitioners who have worked as Class IV staffs in daily wage more than 10 years.

3. Learned Counsel for the petitioners submits that Interlocutory Application No. 1 of 2020 has been filed for grant of stay of the operation of the order dated 17.02.2020 (Annexure -2 to the writ petition) during pendency of the writ petition. He further submits that the said Interlocutory Application was allowed in favour of the petitioners vide order dated 10.03.2022. Learned Counsel further submits that the petitioners were working as Class-IV post in office of the Life Insurance Corporation of India whose details are mentioned in paragraph no. 4 of the writ petition. He further submits that the Sr. Divisional Manager, Life Insurance Corporation of India had issued an order dated 17.02.2020, by which it has been decided to remove all daily wagers before 20th February 2020 and



branches of Life Insurance Corporation were directed not to engage any person other than outsourced agency. From the said letter dated 17.02.2020, those persons were also included, who could not be absorbed in the last recruitment process. He further submits that the question of regularization of Life Insurance Corporation of India employees has been decided by the Hon'ble Supreme Court in SLP (C) Nos. 10393-10413 of 1992 in the case of *E. Prabhawathi and Ors. Vs. L.I.C. of India and Ors.* has come out with a scheme for regularization. According to which, all those temporary employees who have worked for 85 days in any two consecutive calendar year with the L.I.C. of India between 20th May, 1958 uptill date and who **fulfilled** the required eligibility criteria for regular recruitment on the dates of their initial temporary appointment will be permitted to compete for next regular recruitment to be made by the L.I.C. of India, after the regular recruitment for these posts currently schedule for November, 1992. Learned Counsel further submits that candidates will be considered as per their merits with all other candidates who may apply for such appointments including those from the open market. Those candidates will be provided an age relaxation for applying for regular recruitment provided, that they were eligible on the date of their first



temporary appointment for securing regular appointment with the L.I.C. of India. If these candidates are otherwise eligible, they can apply for regular recruitment in the normal course.

4. Learned Counsel for the petitioners further submits that the said scheme of the Life Insurance Corporation of India in *E. Prabhawathi (supra)* has also considered in the case of *L.I.C. of India and Ors. Vs. G. Sudhakar and Ors.* in Civil Appeal No. 2104 of 2000 decided by Hon'ble the Supreme Court vide order dated 22.11.2001. Counsel also submits that subsequently the Hon'ble Supreme Court of India has decided a case namely, *L.I.C. of India Vs. D.V. Anil Kumar 18th of January, 2011 in Civil Appeal Nos. 953-968 of 2005* reported in *2011 SCC Online SC 1602* on the basis of *E. Prabhawathi (supra)* case. The said case of *D.V. Anil Kumar (supra)* has formulated a scheme under the 'One Time Limited Examination' for those temporary persons who are working in Life Insurance Corporation of India for more than five years and who possesses minimum eligible qualification and age as prescribed at the relevant time of their entry into L.I.C. of India would be considered. It has been decided that the written examination will be held in vernacular language with a limited syllabus. The successful candidates of the written examination shall be called



for interview and those who shall be successful in the interview shall be appointed and posted, anywhere in the respective zone.

5. Learned Counsel further submits that the judgement rendered in the case of ***D.V. Anil Kumar (supra)*** has been followed by Hon'ble the Supreme Court in the case of ***Hashmuddin and Ors. Vs. L.I.C.*** in which vide order dated 20.10.2016 passed in Civil Appeal No.(s) 2268 of 2011 reported in ***2016 SCC Online SC 1960***, it was decided that the Life Insurance Corporation of India shall hold a limited written examination for the appellants and intervenor . It has also been observed in the said judgement that the limited examination will not include candidates from open market and will be confined only to the appellants/writ petitioners /intervenors. It has also been mentioned that the Hon'ble Supreme Court has pleased to pass order on 15.01.2020 in Civil Appeal No. 2268 of 2011 (***Hashmuddin Case***) with regard to the condition of service of Appellant in the aforesaid case in terms of judgement rendered in the case of ***Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors.*** reported in ***(2006) 4 SCC 1*** in which direction for One Time Recruitment Process was directed to be made . Counsel submits that in the case of ***Hashmuddin (supra)***, the Hon'ble Supreme Court has pleased to direct that petitioners are



entitled to have a chance of appearing the examination in terms of orders passed in the case of ***Hashmuddin*** (supra) and they are entitled for consideration of their absorption/regularization considering their long length of service as daily wages. Counsel further submits that the petitioners are still working in the respective offices under outsourced contractor. Counsel conclude his argument that in the light of the argument, the petitioners become entitled to be appointed in regular employment .

6. On the other hand, Learned Sr. Counsel for the respondent has submitted that the present writ petition is not maintainable and is fit to be dismissed. It has been mentioned that there is a *prima facie* objection that the writ petition has been filed seeking relief from the L.I.C. of India. He submits that the L.I.C. of India has come into existence by virtue of separate statute. It is a body Corporate created by the Life Insurance Corporation of India Act, 1956 and had/have right to sue or to be sued in its own name. He further submits that in the present writ petition, the L.I.C. of India has not been impleaded as party. These petitioners are daily wagger workers working at different places. Their reliefs have to be granted only and only through the L.I.C. of India and not by any Official. As such, the



writ petition is fit to be dismissed on the ground of mis-joinder, non-joinder of necessary party.

7. He further submits that in paragraph no.4 of the writ petition, Counsel for the petitioner himself submits that the petitioners were working as Class IV in L.I.C. of India office. In fact, the petitioners were engaged on daily wages by the local officers on branch level in different branches at different times to meet the extra requirement of work. The said engagement was not done under regular recruitment process against any sanctioned post, as such, merely their engagement on temporary basis/daily wage and merely their continuance in service for any period of time does not confer any legal right upon them. Legal position for regularization of daily wager and Regularization of Class-IV employee continued on temporary basis are different. He further submits that this fact has completely been suppressed by the petitioner that petitioner nos. 1, 2, 3, 5 and 6 along with other similarly situated workers have filed an application under section 33 of the Industrial Disputes Act, 1947 before the Assistant Labour Commissioner (Central), Patna, where a Conciliation Proceeding was filed and a date for conciliation has been fixed, but on the said date, the petitioners' representative left the proceeding, as a result of which, the Conciliation



proceeding failed. Counsel further submits that the case of ***D. V. Anil Kumar (supra)*** deals different situation i.e. to show this Writ Petition is for absorption of temporary employees. Similarly, ***Hashmuddin (supra)*** case is for regularization for petitioners of respective case only. Counsel further submits that the petitioners had been appointed/engaged through back door entry and not through proper channel, as such, the very entry of the petitioners are illegal and does not confer any legal right upon them to invoke a writ of mandamus under Article 226 of the Constitution of India. He submits that the case of ***Uma Devi (supra)*** decided by Hon'ble the Supreme Court of India is not for backdoor entry persons. He further submits that Master and Servant relationship does not exist between the petitioners and the Corporation.

8. Upon perusal of the documents, the following fact filtered to this case, as under :-

The prayer which the petitioners are demanding can be fulfilled only by the L.I.C. of India who is body corporate created under Section 3 of the Life Insurance Corporation of India Act, 1956. Section 3 of the Act states as follows :-

3. Establishment and incorporation



of Life Insurance Corporation of India.

(1)With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.

(2)The Corporation shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and may by its name sue and be sued.

9. Upon reading the said section, it transpires that the Life Insurance Corporation of India is a body corporate and has right to sue or to be sued, the order passed by this Court cannot be executed from the present respondents. As Life Insurance Corporation of India who is a legal personalty in the eye of law has not been made party and, therefore, this Court is of the firm view that the present writ petition suffers from defect of mis-joinder and non-joinder of necessary party.

10. Second aspect which has been filtered from the case of ***D.V. Anil Kumar (supra)*** is relating to the case of absorption. The case of ***Hashmuddin (supra)*** is relating to regularization of petitioners of the said case and in both the cases, the Life Insurance Corporation of India is one of the



party. But in the present case neither Life Insurance Corporation is party nor it is a case of absorption or regularization. Petitioners were not working on Class IV post rather they were daily wage worker. Any order shall be effective only through the Life Insurance Corporation of India, who is legally entitled as per Life Insurance Corporation of India Act, 1956. Since Life Insurance Corporation of India has not been made party about which objection has been in the counter affidavit filed by the respondents in this writ petition on 06.10.2020 itself, in which question of mis-joinder and non-joinder has been raised, but it has not been taken care of by the petitioners till the date of final argument.

11. Since the present Writ Petition suffers from the defects of mis-joinder and non-joinder of necessary party, this Court has no option, but to dismiss the present Writ Petition. Accordingly, the present Writ Petition stands dismissed.

12. However, considering the status of the petitioners, liberty is granted to the petitioners that if they opt to work through the outsource agency, then the officers of the Life Insurance Corporation of India shall refer this matter before the Life Insurance Corporation of India for consideration, so that in future, protection of Labour Laws shall be granted to them



including protection of Minimum Wages, E.P.F. and E.S.I.C. etc.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	12/09/2024
Uploading Date	08/10/2024
Transmission Date	NA

