

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9743 of 2021

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1. Yugeshwar Sharma Son of Late Shivrath Singh Resident of Village - Arap, P.O. - Arap, P.S. - Bikram, Patna, Bihar- 801104.
 2. Lal Babu Shrivastav son of Ram Narayan Prasad Resident of Block No. - 15 Flat no. - 126, Rajendranagar, Rajendranagar, Patna, Bihar- 800016.
 3. Gita Devi Wife of Rambali Mahto Resident of R K Avenu Road Kajipur Road no. - 4, Patna, Patna, Bihar - 800016.
 4. Karu Ram son of Ramchandra ram Resident of Near Gaon Chauraha, Vill - beur, Phulwari, Beur, Phulwari, Patna, Bihar- 800002.
 5. Mohammad Mohan son of Md Nizamuddin Resident of Naya Tola, Phulwari, Patna, Phulwari, Bihar- 801505.
 6. Ramjatan Sharma son of Ramprvesh singh Resident of Kamta, Hilsa, Hilsa, Kamta, Kamta, Nalanda, Bihar- 801302.
 7. Abhishek Kumar son of chandeshwar paswan Resident of 00, Jamalpura Jamalpura, Patna, Bihar- 801109.
 8. Rajendra Ram son of Rajnath Ram Resident of Vill - Aspura, PS- Bikram, Bikram Patna, Bihar- 801104.
 9. Ganesh Ram son of Somaru ram Resident of new Ambedkar Colony, Khadpar, Sampatchak, Patna, Bihar- 800006.
 10. Arun Kumar son of Ram Sagar das Resident of S.T.P. Saidpur, B.R.J.P., Sampatchak, Patna, Bihar- 800016.
 11. Nagendra Das son of Harakh Das Resident of Vill- Udaypur, Post- Nadghat, PS- Gaurichak, Jujharpur, Patna, Bihar- 800007.
 12. Satish Kumar son of Chandeshwar Prasad Resident of Rawaich, Bakhtiyarpur, Near Block, Bakhtiyarpur, Patna, Bihar- 803212.
 13. Mithilesh Sharma son of Chadeshwar Mistri, Resident of Kali mandir, Surajpur, Nalanda, Bihar- 803111.
 14. Ramu Das son of Kalias Ravidas Resident of Sukathiyade, Akuna, Patna, Bihar- 804453
 15. Sabiul Hassan Khan son of Sarwar Hassan Khan Pandariba Lane Po Jhauganj Sampatchak, Patna, Bihar- 800008.
 16. Lal Mohan Mishra Son of Late Tejnarayn Mishra Resident of 27 Vill - Ojhaul (Gopalakha), post- Bharam, Jhanjharpur, Madhubani, Bihar- 847401.
 17. Mansoor Alam Son of Nijamuddin Resident of Naya Tola Janipur Road, opposite Jama Masjid, Phulwari Sharif, Patna, Bihar- 801505.
 18. Pramod Kumar Son of Upendra Mahto ward no. - 08, Vill - Mabbi, Magurgarh, Samastipur, Bihar- 848208.
 19. Banarasi Mahto Son of Shivrath Prasad Resident of Ishapur, Phulwari, Phulwari, Patna, Bihar- 801505.



20. Sanjit Kumar Son of Banarshi Singh Resident of Isopur, near- shiv mandir, Phulwari, Patna, Bihar - 801505.
21. Sunil Kumar son of Dukhan Singh Resident of -Vill Jhunathi Khurd, Nehalpur, Nehalpur, Ratni Faridpur, Arwal, Bihar- 804429.
22. Ravindra Kumar son of Ambikam Rai Resident of Thakur Nagar, Krishifarm, Mobarakpur, Patna, Bihar- 801503.
23. Suman Kumar Thakur son of Kulanand Thakur Resident of vard no. - 10Vill Vill - Jajuar madhy, Jajuara, Muzaffarpur, Bihar - 843360.
24. Prabhans Ram Mallah Son of Ramugar Ram Mallah Resident of Vill - Jamalpur, Post Office - Andar, Jamalpur, Siwan, Bihar- 841231.
25. Dilip Singh son of Raghunandan Prasad Resident of Shitalagadh, Pandui, Jehanabad, Bihar- 804433.
26. Raj Kumar Das son of Ramdevan Ram Resident of Vill - Bhaluan, Akauna, Patna, Bihar- 804453.
27. Harikesh Kumar son of Narmadeshvar Mishra Resident of Bishunpur Jaynarayan, Muzaffarpur, Bihar- 843119.

... .. Petitioner/s

Versus

1. The State of Bihar, through the chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar.
3. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Union of India through Director General, National Mission for Clean Ganga, Ministry of Jal Shakti, Department of Water Resource, River Development and Ganga Rejuvenation, Government of India, New Delhi.
5. The Secretary, Department of Urban Development and Housing Department, Government of Bihar, Old Secretariat, Patna.
6. The Chairman, Erstwhile Bihar State Water and Sewage Board, Patna.
7. The Bihar Urban Infrastructure Development Corporation through its Managing Director, West Boring Canal Road, Patna.
8. The Managing Director Bihar Urban Infrastructure Development Corporation West Boring Canal Road, Patna.
9. The Executive Engineer Bihar Urban Infrastructure Development Corporation, Bankipur Anchal, Saidpur, Patna.

... .. Respondents/s

with

Civil Writ Jurisdiction Case No. 9928 of 2021



1. Kundan Kumar Upadhyay Son of Suresh Upadhyay Resident of Halalpur Madarpur Hilapur Madarpur Hajipur Vaishali Bihar-844502.
2. Shashi Prasad Son of Shiv Sharam Prasad Resident of Brahampur, Phulwari, Patna, Bihar-801505
3. Arjun Ram Son of Late Manghu Ram Resident of Madhu Sudan Nagar, Ballami Chak, Anisabad, Phulwari, Patna, Bihar-800002
4. Dhanesh Chandra Jha Son of Markande Jha Ward no. 22 Indupur, Barahiya, Lakhisarai, Bihar-811302
5. Arun Kumar Mishra Son of Tarakant Mishra Resident of House No.88 S.T.P. Patna Beur Jail Road, Near Beur Jail, Beur, Patna, Bihar-800001
6. Suryadev Ram Son of Shivnath Prasad Resident of Kisunpur, Sikandarpur, Post-Bihta, Bihta Patna, Bihar-801103
7. Rameshwar Ojha Son of Vanshidar Ojha Resident of Sri Krishna Singh Path, Patel Golamber Near, Dhobi Ghat, Pumping Plant Airpot, Phulwari, Patna, Bihar-800001
8. Chhabila Rajak Son of Dholan Rajak, Resident of Vill-Mohanpur, Dharahara, Munger, Mohanpur, Munger, Bihar-811212
9. Narendra Prasad Singh Son of Krishna Dev Singh Resident of Near Sewage Plant, Beur, Phulwari, Patna, Beur, Patna, Bihar-800002
10. Samar Mukharjee, Son of Sastipad Mukharjee, Resident of Babu Bazar Saristabad, Phulwari, Patna, Bihar-800002
11. Sheo Shankar Singh Son of Jageshwar Singh Resident of House No.45 Shankar Niwas, Station Mod Gali, Station Road Gaya, Murli Hill, Gaya, Bihar-823002
12. Deo Nandan Ishwar, Son of Suryanarayan Ishwar, Resident of Ward No.07 Siuri, Majhaul, Begusarai, Bihar-851127
13. Mahendra Prasad Singh Son of Ishwar Dhari Lal, Resident of Auta, Patna, Bihar-803303
14. Dinesh Kumar Mitra, Son of Bhavesh Chandra Mitra, Resident of Beur Sivej Sodh Sansthan Beur Jail Road, Beur, Patna2, Anisabad, Patna, Bihar, 800002
15. Ramjanam Ray Son of Mahabir Ray Resident of Etavarpur, Patna, Bihar-804453
16. Subhash Chandra Jha Son of Markanday Jha Resident of Near Plant Campus, B.R.J.P. Div. No-2, Phulwari, Patna, Bihar-800002
17. Narayan Singh Son of Ram Bhuvan Singh Resident of Near Sewage Plant, Beur, Phulwari, Beur, Patna, Bihar-800002.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms Department,



Government of Bihar.

- 3. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
- 4. The Union of India through Director General, National Mission for Clean Ganga, Ministry of Jal Shakti, Department of Water Resource, River Development and Ganga Rejuvenation, Government of India, New Delhi.
- 5. The Secretary, Department of Urban development and Housing Department, Government of Bihar, Old Secretariat, Patna.
- 6. The Chairman, Erstwhile Bihar State Water and Sewage Board, Patna.
- 7. The Bihar Urban Infrastructure Development Corporation through its Managing Director, West Boring Canal Road, Patna.
- 8. The Managing Director Bihar urban Infrastructure Development Corporation West Boring Canal Road, Patna.
- 9. The Executive Engineer, Bihar Urban Infrastructure Development Corporation, New Rajdhani Anchal, Division-2, Beur, Patna.

... .. Respondents/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9743 of 2021)
For the Petitioner/s : Mr. Amit Pandey
For the BUIDCO : Mr. Lalit Kishore, Sr. Advocate
Mr. Rabindra Kumar Priyadarshi, Advocate
For the State : Mr. Ashutosh Kuamar Upadhyay, Advocate
(In Civil Writ Jurisdiction Case No. 9928 of 2021)
For the Petitioner/s : Mr. Amit Pandey
For the BUIDCO : Mr. Lalit Kishore, Sr. Advocate
Mr. Rabindra Kumar Priyadarshi, Advocate
Mr. Ayush Kumar, Advocate
Mr. Kanishk Shounbar, Advocate
For the State : Mr. AC to AAG-7

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 24-07-2024 Since similar questions of law and facts are involved in both the writ petitions, they are heard together and are being disposed of with this common order.

2. The Petitioners, a daily wage workers under Bihar Urban Infrastructure Development Corporation (hereinafter referred to as the “BUIDCO”), have approached this Court



under extraordinary constitutional writ jurisdiction for the following reliefs:-

“i) For issuance of an order (s) / direction (s) or writ(s) in the nature of Mandamus directing the respondents to reinstate the petitioners into the service declaring their termination illegal and consequently directing respondents to permit the petitioners to resume duty without any further delay with all due back wages and consequent financial benefits for which they are entitled. And/or

(ii) For issuance of further order(s) / direction(s) or writ(s) in the nature of Mandamus directing the respondents for issuance of a writ of prohibition or any other appropriate writ/writs, direction/directions to the respondents against employing other candidates in place of the petitioners. And/or

(iii) A direction be issued upon the respondent authorities, each one of them, their servants and/or subordinates and/or agents to forthwith produce and/or caused to be produced the entire records relating to the Petitioners case and on such production being made, render conscionable justice upon perusing the same; And/or

(iv) For issuance of any further order (s) / direction (s) or writ (s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.”

3. Indisputably the Petitioners were appointed as daily wage workers in Bihar Rajya Jal Parishad Board. Subsequently, Bihar Rajya Jal Parishad Board was dissolved and the activities of the Board was decided to be looked after by the BUIDCO. The Petitioners had been working as Pump Operators since 1994-1995 or before. At the time of their engagement,



Petitioners got an impression that they would be absorbed as permanent employees of the Corporation.

4. It is the grievance of the Petitioners that on 18th of March, 2021, the Respondent No. 9 asked them not to come to work as Pump Operator any more. Thus, the Petitioners were orally restrained from discharging their duties. The Petitioners, subsequently, submitted representations. However, the authorities did not pay any heed to their representations. Their services were discontinued as the authorities decided that their services were no longer needed. No formal order of termination of the services of the Petitioners was passed by the Respondent Authority.

5. Hence, the instant writ petitions.

6. Counter affidavit has been filed on behalf of the BUIDCO denying all the allegations made out in the writ petition. It is specifically stated that the step for discontinuation of services of daily wagers has been done by the respective Engineers, in view of the decision of the Board to reduce the number of daily wagers as per actual need/requirements upon the respective site/office. The respective Engineers after considering their requirement as well as efficiency in the matter of knowledge in operation of pump/motors, electric repairing



works, cleaning of underground drainage system, knowledge of maintenance of sump houses etc., decided to discontinue the services of daily wagers.

7. Moreover, it is submitted on behalf of the Respondents that under the project “Namami Gange”, advanced technology has been introduced for operation of motor pumps and other related affairs for which requirement of daily wagers has been reduced. Therefore, the daily wagers were not terminated but their services have been discontinued by the respective Executive Engineers, considering work load as well as inefficiency of doing work due to advancement of age.

8. Thus, through out the counter affidavit, it is time and again reiterated that the services of the Petitioners were not terminated but discontinued. The said assertion made in petition of complaint is denied on behalf of the Petitioners in paragraph nos. 6 and 7 of the rejoinder affidavit.

9. It is contended by learned Advocate on behalf of the Petitioners that BUIDCO is a public authority, therefore, they cannot take any arbitrary and *mala fide* decisions without giving any opportunity to the Petitioners to raise their claims. Moreover, any employment cannot be discontinued in the manner it was done against the Petitioners.



10. The learned Advocate on behalf of the Petitioners on the above-mentioned facts refers to a decision of the Full Bench of this Court in the case of ***Ram Tapeshwar Sah & Ors v. State of Bihar & Ors***, reported in ***2010 3 PLJR 459***. In the said decision, the issue involved for adjudication is as to whether the daily wages employees who have been appointed as a daily wager prior to 1982 and appointed as a work charge establishment employee on Regular Pay in 1988 under the recommendation of the departmental committee can be regarded back by as daily wage employees after lapse on 15 years on the ground that their appointments in work charge establishment was against the resolution of Finance Department vide Memo No. 6394 dated 23rd of October, 1987.

11. The Full Bench of this Court considering the decision of the Hon'ble Supreme Court in the case of ***M.A. Hameed v. State of A.P. & Anr.***, reported in ***(2001) 9 SCC 261***, ***Badri Prasad & Ors v. Union of India & Ors.***, reported in ***(2005) 11 SCC 304*** and ***Secretary, State of Karnataka & Ors. v. Umadevi & Ors***, reported in ***2006 2 BBCJ 398*** and similar other decisions concluded in paragraph 13 as hereunder:-

“13. From the aforesaid decisions of the Hon'ble Apex Court it is quite apparent that the law with regard to the matter in dispute is already settled and the authorities concerned are duty bound to deal



with all such matters as per the law and spirit of the said order of the Hon'ble Apex Court and all the decisions of any Court, running contrary thereto, shall have no effect in the said matter. Hence, the State of Bihar is directed to immediately take steps to constitute a committee of three high officials concerned, presided by the Commissioner-cum-Secretary, Public Health Engineering Department, Govt. of Bihar and also including the Engineer in Chief-cum-Special Secretary, Public Health Engineering Department to consider the cases of all the Petitioners after giving them opportunity to place their respective claims and to decide the matters in issue afresh in accordance with the directions given in aforesaid judgement of the Hon'ble Apex Court in the case of Secretary, State of Karnataka (supra) and the law settled therein with respect to the various schemes of the State Government concerning such appointments and regularisation. The State Government is further directed to take steps for appointment of such Committee preferably within a period of one month from the date of this order so that the said Committee may be able to decide the entire matters by 30th September, 2006 as it has been stated on behalf of the State Government on 10.5.2006 that the case of the Petitioners who are fulfilling the eligibility criteria as per the policy will also be considered and finalized on or before 30th September, 2006. The Petitioners will be at liberty to move the said Committee after it is appointed by the State Government raising their grievances in accordance with law settled by the Hon'ble Apex Court.”

12. The learned Advocate on behalf of the Petitioners next refers to an unreported decision of this Court passed in C.W.J.C. No. 11533 of 2018 (Shyam Kishore Singh & Ors. v. The State of Bihar & Ors) along with similar other writ petitions



decided on 12th of May, 2023. In this case also, some daily wage workers were terminated from service without considering the policy of 2006 which was formulated on the basis of the judgement in Ram Tapeswar Sah (Supra). A Coordinate Bench of this Court concluded with the following words in Paragraph Nos. 10 and 11:

“10. As regards the other petitioners about whom the respondents have not found their case within the zone of consideration as per the Policy of 2006, the respondents are directed to pass a reasoned order giving all such grounds which are going against them in the matter of regularization but while doing so, the respondents must take note of it that they should not be discriminated and no such ground would be available to the respondents which have already been given a go-bye by the same respondents in case of other similarly situated. In case they will be aggrieved by such reasoned order, liberty will be available to such persons to seek their remedy in accordance with law.

11. The matters which relate to other Department shall be referred to those department within a period of one month from the date of communication of this Court. Since there is no denial of the fact that the posts are still available, the respondents are expected to do the complete exercise with all endeavours to confer the same benefits to the petitioners which have been allowed to others similarly situated. Several cases have been cited at the Bar and this Court has taken note of those instances in its orders which have already been quoted hereinabove in which this Court has noticed that how the department has conferred benefits to several persons in different situations.”



13. The learned Advocate for the Petitioners also refers to a Circular, dated 10th of May, 2006, containing policy of regularization of daily wage employees. On the same issue, the learned Advocate for the Petitioners refers to another decision in the case of *The Organizer, Dehri C.D. & C.M. Union Ltd. v. The State of Bihar & Ors*, reported in **2014 1 PLJR 695**.

14. The learned Senior Counsel on behalf of the Respondents, on the other hand, enunciated the history of creation of BUIDCO after abolition of Bihar Rajya Jal Parishad Board. It is submitted by the learned Senior Counsel on behalf of the Respondents that BUIDCO had been taking the services of erstwhile daily wagers on the same terms and conditions and there was no stipulation that the daily wagers would be absorbed as permanent employees of the Respondent organization. Subsequently, a policy decision was taken in view of introduction of new project under the name and style “Namami Gange” and installation of latest scientific devices with regard to the pumping of water maintenance of water supply in the populated locality etc. As a result, the Petitioners’ services were no longer required. It was decided that the operation and



maintenance of the advanced technology would be run by outsourcing agencies and, accordingly, new contractors were appointed. Therefore, the services of the Petitioners are no longer necessary.

15. It is also submitted by the learned Senior Counsel on behalf of the Respondents that the decisions cited on behalf of the Petitioners are not applicable in the instant case because the decisions of this Court were passed in order to comply with the directions of the Hon'ble Apex Court in Uma Devi's Case. In Uma Devi (3) all the Government Departments were directed to take up one time measure for regularization of daily wagers/ad-hoc employees/contractual employees who had been working continuously for 10 years with the establishment with further stipulation that they worked continuously at least 240 days in a year. Those temporary employees were directed to be regularized in the department as one time measure. The State of Bihar formulated a policy in this regard and as per the policy, employment has been made. The present Petitioners does not fall within the scope of the said policy and, therefore, the decisions relied upon by the learned Advocate on the behalf of the Petitioners is not applicable in the instant case.

16. Having heard the learned counsels for the parties



and on careful perusal and appreciations of materials on record, this Court thinks it pertinent to mention that the concept of ad-hoc appointment is that in an emergent situation, if regular appointment by conducting examination and taking interview etc., is not possible due to shortage of time and till such time a regular appointment is made, an ad-hoc appointment is made in the exigences of administration.

17. It is needless to say that an ad-hoc appointment is made to a post but not to a cadre and if the ad-hoc appointment is made *de hors* the rule, service law does not postulate regularization of such ad-hoc appointees.

18. In the instant case, the Petitioners were appointed as daily wagers. They were discharging their duties as Pump Operators. The Petitioners do not come forward with a case that the Respondents authority maintains a cadre of Pump Operators and considerable number of posts were left vacant in the cadre and the Petitioners were compelled to render their services against those vacant posts. In such case, the Petitioners might have some actionable claim. The nature of the service of the Petitioners is like that of a personal contract between the employee and the respective Executive Engineer to operate water pump machine on daily wage.



19. In the case of ***State Bank of India v. S.N. Goyal***, reported in (2008) 8 SCC 92, the Hon'ble Supreme Court held in paragraph 17 as hereunder:--

“17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well-recognised exceptions to this rule are:

i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief—damages or reinstatement with consequential reliefs—is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the



relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide S.B. Dutt (Dr.) v. University of Delhi [AIR 1958 SC 1050] , U.P. Warehousing Corpn. v. Chandra Kiran Tyagi [(1969) 2 SCC 838 : (1970) 2 SCR 250] , Sirsi Municipality v. Cecelia Kom Francis Tellis [(1973) 1 SCC 409 : 1973 SCC (L&S) 207 : (1973) 3 SCR 348] , Vaish Degree College v. Lakshmi Narain [(1976) 2 SCC 58 : 1976 SCC (L&S) 176 : (1976) 2 SCR 1006] , J. Tiwari v. Jwala Devi Vidya Mandir [(1979) 4 SCC 160 : 1979 SCC (L&S) 356 : AIR 1981 SC 122] and Dipak Kumar Biswas v. Director of Public Instruction [(1987) 2 SCC 252 : (1987) 3 ATC 505 : AIR 1987 SC 1422] .)”

20. The employment of the Petitioners is not in the nature of public employment, governed by any statutory rule. Therefore, the Petitioners cannot claim any relief of reinstatement under Article 226 of the Constitution of India in these writ petitions. However, the Petitioners are entitled to take legal action for damages in a Civil Court of competent jurisdiction.

21. For the reasons stated above, this Court finds that both the writ petitions are not maintainable.

22. Accordingly, both the writ petitions are dismissed on contest.



23. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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