

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9926 of 2024

1. Vinod Kumar Sinha Son of- Shri Yogendra Prasad Resident of Village- Chhoti Marai, P.S.- Hajipur, District- Vaishali.
2. Ravindra Kumar, Son of- Shri Mahendra Narayan Singh Resident of Village- Galimpur, P.S.- Kharagpur, District- Munger.
3. Awdesht Tiwary, Son of- Shri Nageshwar Tiwari Resident of Village Hetanpur, P.S.- Danapur, District- Patna.
4. Mahendra Ram, Son of- Shri Motilal Resident of Mohalla- East Lohanipur, P.S.- Kadamkuan, District- Patna.
5. Ram Yatan Singh, Son of- Shri Kedar Singh Resident of Bhimbigha, P.S.- Chhoti Jamaura, District- Nawada.
6. Mahesh Prasad, Son of- Shri Ramdeen Prasad Resident of Village Pakridih, P.S.- Amnor, District- Saran.
7. Deena Paswan, Son of- Late Mangal Paswan Resident of Village- Saidpur, P.S.- Fathua, District- Patna.
8. Manoj Kumar, Son of- Sri Suresh Prasad Singh Resident of Losgrani, P.S. Surajgarha, District- Munger.
9. Madan Prasad Singh, Son of- Shri Devi Dayal Singh Resident of Village- Bhithi Shahbuddin, P.S.- Baniapur, District- Siwan.
10. Md. Akhtar, Son of- Sheikh Khudus Resident of Piro, P.S.- Piro, District- Bhojpur.
11. Neelima Devi, Wife of- Late Kanhaiya Ram Resident of PHED Campus, P.S.- Pirbahor, Town and District- Patna.
12. Sumitra Devi, Wife of- Late Pradeep Ram Resident of Mohalla- Lohanipur, P.S.- Kadamkuan, Town and District- Patna.
13. Umesh Ram, Son of- Late Dewali Ram Resident of Kadamkuan, P.S.- Kadamkuan, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
3. The Secretary, Public Health and Engineering Department, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
4. Engineering-IN-Chief, Public Health and Engineering Department, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
5. Zonal Chief Engineering, Public Health and Engineering Department, New Secretariat, Patna.
6. Superintending Engineer, Public Health and Engineering Department, New Secretariat, Patna.
7. Executive Engineer, Public Health Engineering Division, Patna (East).



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ravi Kumar, Advocate
Mr.Shashi Kumar, Advocate
For the State : Mr.S.Raza Ahmad, AAG 5
Mr.Alok Ranjan, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 01-07-2024 Indisputably, the petitioners are daily wage workers under Public Health Engineering Department (hereinafter referred to as the “PHED” for short), Government of Bihar.

2. One Binod Kumar Sinha and others filed a writ petition being C.W.J.C. No. 507 of 1997 which was admitted for hearing on 25th of January, 1999 and a Coordinate Bench passed an interim order directing the department that in the meantime the petitioners who are said to be working on daily wage basis in the PHED shall be entitled to payment of current salary at the minimum in the prescribed time scale during the period of their continuance in accordance with rules. Subsequently, C.W.J.C. No. 507 of 1997 was disposed of on 15th of May, 2008 with the following order:-

“Learned counsel for the petitioner now brings to my notice some recent decisions of this Court including an Office Order No. 184, Muzaffarpur dated 30.11.2006. By the said notification the Executive Engineer, Public Health Engineering Circle, Muzaffarpur based on the



order dated 28.11.2006 passed in C.W.J.C. No. 7359 of 2002 (Ram Tapeswar Sah and Ors vs. State of Bihar and Ors.) along with other analogous cases have issued notification regularizing the services of a large number of people working under the said Executive Engineer. Similar kind of exercises is required even with regard to the present petitioners.

If what has been stated by them is taken to be correct, this Court in the totality of the facts and circumstances allows the petitioners to file representation before the Respondent No. 2, Engineer-in-Chief-cum-Special-Secretary, Public Health Engineering Department, Government of Bihar along with a copy of some of the decisions rendered by this Court in regard, including C.W.J.C. No. 14979 of 2001 and other analogous cases in support of their claim. It is hoped and expected that Respondent No. 2 shall get the matter examined and taking into consideration that a long time has already elapsed in the present litigation will endeavor to come to a conclusion within a period of six months from the date of the filing said representation. The outcome of the said exercise shall govern the future interest and claim of the petitioners.”

3. Thus, it is clear that the interim order passed in the aforesaid writ petition was not made absolute at the time of final hearing of the writ petition. The record of this writ petition



further shows that the petitioners filed a contempt petition being M.J.C. No. 276 of 2000 which was disposed of by this Court on 30th June 2009. The contempt petition relates to the petitioners' claim of deliberate and intentional violation of the interim order dated 25th January 1999 passed in C.W.J.C. No. 507 of 1997 by the opposite party. The said contempt petition was disposed of with the following observation :-

“From the aforesaid observation it is evident that the Apex Court has set aside the direction of the High Court directing payment of salary to the employees equal to the salary and allowances that are being paid to the regular employees of their cadre in Government service with effect from the dates from which they were respectively engaged or appointed and it was held that the Division Bench of the High Court at best should have directed that wages equal to the salary that are being paid to the regular employees be paid to these daily wage employees with effect from the date of its judgment.

In view of the aforesaid direction of the Apex Court in Uma Devi's case there does not appear to be any occasion for the petitioners to be paid salary at the interim stage while the writ petition was pending.

In the above circumstances, no case



for willful violation of the orders of this Court is made out.

The contempt application is, accordingly, dismissed.

However, it is made clear that it will be open to the petitioners to challenge the decision of the authorities rejecting their representation in appropriate proceedings as they may be advised. “

4. The story of litigation was not concluded. Some of the daily-wagers again filed C.W.J.C. No. 11243 of 2009 which disposed of on 05.09.2011 giving liberty to the petitioner to submit a representation before the Principal Secretary in context of any grievance of discrimination and the Principal Secretary shall examine the matters appropriately and dispose it of by reasoned and speaking order within a maximum period of three months from the date of receipt and/or production of a copy of this order before him but only after hearing all concerned likely to be affected.

5. Since the Principal Secretary failed to dispose of their representation, the daily-wagers filed a contempt petition. When the contempt petition was taken up for hearing on 05.09.2014, it was brought to the notice of the Court that the Secretary, Public Health Engineering Department already disposed of the matter on 09.09.2013. The contempt petition



was disposed of permitting the petitioner to assail the order of the Secretary, Public Health and Engineering Department.

6. Then comes C.W.J.C. No. 16633 of 2018. The said writ petition was disposed of directing the petitioners to file a consolidated representation before the Respondent No. 2 within a period of two weeks from the date of the order and the Respondent No. 2 is directed to dispose of the same within a period of four weeks thereafter.

7. Again some of the daily-wagers filed C.W.J.C. No. 4287 of 2018 which was disposed of by a Coordinate Bench on 15th March 2018 permitting the petitioners to file a representation before the concerned authority with a direction to dispose of the same. The representation of Lalan Kumar Jha and others were disposed of on 26th April, 2018.

8. The Secretary, Public Health Engineering Department disposed of the representation filed by the said Lalan Kumar Jha and others as per the order passed in C.W.J.C. No. 4287 of 2018.

9. The Secretary disposed of the said representation with the following order:-

“इस बाद का संक्षिप्त इतिहास यह है कि
माननीय उच्च न्यायालय पटना द्वारा सी०डब्लू०
जे०सी० संख्या - 11208/2000 ललन कुमार झा एवं



अन्य बनाम राज्य सरकार एवं अन्य में दिनांक 10.01.2000 को पारित आदेश के द्वारा दैनिक पारिश्रमिक पर कार्यरत इन छः आवेदकों को विहित वेतनमान से न्यूनतम वेतन पर रखने का आदेश दिया गया था। जिसे दिनांक 06.11.2012 को पारित अन्तिम आदेश के द्वारा अक्षुण्य रखा गया था। इसके बाद इस संबंध में अवमाननाबाद 2241/13 भी दायर किया गया और पुनः इन छः आवेदकों के द्वारा सी०डब्लू० जे०सी० संख्या 4287/ 2018 दायर किया गया। अन्तिम दो वादों के कारण यह बताया गया कि माननीय उच्च न्यायालय पटना द्वारा सी०डब्लू० जे०सी० संख्या-11208/2000 ललन कुमार झा एवं अन्य बनाम राज्य सरकार एवं अन्य में 2012 के पारित आदेश का पुनः अनुपालन नहीं हुआ।

आवेदकों को सुना एवं अभिलेखों का अवलोकन करने से निम्न तथ्य स्पष्ट होता है-

1. नौ याचिकाकर्त्ताओं में से तीन दिनेश ठाकुर सदानन्द झा मो० समद का नियमितिकरण किया जा चुका है किन्तु वर्तमान छः आवेदक ललन कुमार झा, अजीत कुमार सिंह, रामसेवक यादव, रामदयाल पंडित सुरेश प्रसाद सिन्हा एवं कामेन्द्र दसौधी आज भी वैधानिक तौर पर दैनिक पारिश्रमिक पद कार्यरत है।

प्रश्नगत न्यायदेशों के द्वारा इन छः आवेदकों को विहित वेतनमान के न्यूनतम वेतन पर दैनिक वेतनभोगी के रूप में रखा जाना है।

विभाग द्वारा यह समर्पित किया गया कि पदों कली अनुपलब्धता के कारण इन कर्मियों का नियमितिकरण नहीं किया जा सकता तथा इन्हें उक्त आदेश के कारण हटाया नहीं गया।



कार्यपालक अभियंता लोक स्वास्थ्य प्रमंडल दरभंगा के द्वारा यह स्पष्ट किया गया कि प्रश्नगत न्यायादेशों के आधार पर इज छः आवेदको को कुछ अवधि के लिए न्यूनतम वेतन पर रखा गया । किन्तु यह स्पष्ट नहीं है कि उन्हें किन कारणों से दैनिक पारिश्रमिकी का भुगतान किया गया ।

दोनों पक्षों को सुनने एवं अभिलेखों से स्पष्ट है कि इन छः आवेदकों की सेवा नियमितिकरण पर एक बार विचार किया गया है किन्तु पदों के अनुपलब्धता के कारण उनकी सेवा दैनिक पारिश्रमिक पर अक्षुण्य रखने एवं न्यूनतम वेतन भुगतान करने की वैधानिक अनिवार्यता है।

अतः उक्त के आलोक में कार्यपालक अभियंता लोक स्वास्थ्य प्रमंडल दरभंगा को निर्देश दिया जा सकता है कि अनुमान्य अपुनरीक्षित वेतनमान के न्यूनतम वेतन पर दैनिक पारिश्रमिक पर उनकी सेवा जारी रखे साथ ही मुख्यालय से आवंटन की अध्याचना करते समय निदेशों के साथ उस आदेश का संदर्भ उद्धृत करें। यह आदेश इन आवेदकों के नियमितिकरण का आधार नहीं माना जाएगा”

10. The instant writ petition is filed by some other daily-wagers who were not regularized and paid the basic minimum salary available to a permanent worker.

11. It is needless to say that the Hon'ble Supreme Court in *Uma Devi versus State of Karnataka (3)* clearly held that any daily-wage workers or contractual workers cannot claim any permanent service in the Department as of right.



However, some relaxation was given under certain facts and circumstances in *Uma Devi (supra)* to the effect that the contractual employee in any establishment can pray for permanent employment within six months from the date of the said order and there is a one-time measure, the establishment can look into it.

12. In the instance case, the litigation with regard to the daily-wage workers started in the year 1997. I have already stated that the appointment of daily-wage workers is absolutely temporary and fortuitous. The establishment is under the power and authority to relieve them from their services because they are daily-wagers and they cannot claim minimum time pay-scale because the nature of employment is not permanent.

13. In view of such legal position, the writ petition is devoid of any merit and accordingly the same is dismissed.

(Bibek Chaudhuri, J)

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