

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13524 of 2024

Prashant Kumar Son of Shri Ganesh Pandey Resident of Village- Pachpaika,
P.S.- Vaishali, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Vikash Bhawan, Patna.
3. The Director-in-Chief, Health Service, Health Department, Govt. of Bihar, Patna.
4. The Civil Surgeon, Health Department, Govt. of Bihar, Patna.
5. The Superintendent, Sadar Hospital, Hajipur, Vaishali, Bihar.
6. The Deputy Superintendent-cum- Public Information Officer, Sadar Hospital, Hajipur, Vaishali.
7. The Secretary, Healthline, East of Yogipur Shivmandir, Lohia Nagar, Kankarbagh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shambhu Sharan Singh, Adv.
For the Respondent/s : Mr.Advocate General

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-09-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. Learned counsel for the petitioner submits that the present writ petition has been filed for quashing the memo No.12/PA-Court-01-103-2022-601(12) Swa/Patna dated 02.07.2024 issued by the Director-in-Chief, Health Service, Department of Health, Government of Bihar, Patna communicated to the petitioner by which the representation filed



by the petitioner has been rejected. Further prayer has been made for regularization of the petitioner in the Health Department at Sadar Hospital, Hajipur, Vaishali.

3. Counsel for the petitioner submits that the petitioner has filed C.W.J.C. No.19145 of 2021 which was disposed off vide order dated 13.03.2024 with liberty to approach Respondent No.3 *i.e.*, the Director-in-Chief, Health Service, Department of Health, Government of Bihar, Patna. He further submits that the representation of the petitioner was rejected vide Memo No.601(12) dated 02.07.2024.

4. Counsel further submits that the petitioner was a outsourcing employee and a similarly situated person as like that of petitioner, has moved before the Co-ordinate Bench of this Court in C.W.J.C. No.10558 of 2024 (*Jitendra Kumar Vs. the State of Bihar & Ors.*) in which vide order dated 16.07.2024, matter has been decided and direction has been given by the Co-ordinate Bench of this Hon'ble Court.

5. Counsel for the State submits that from bare perusal of the writ petition, it transpires that the representation of the petitioner was rejected on the ground that the petitioner does not have vested right to claim for regularization. He further submits that the only direction was made by the Co-ordinate Bench of



this Court that protection of minimum wages as per the recent Circular published by the State of Bihar under Minimum Wages Act, be made.

6. Counsel for the State further submits that the representation which has been rejected by the Authority, challenged by the petitioner contained in Memo No. 601(12) dated 02.07.2024, is well reasoned order and there is no need of any interference.

7. The operative part of the Judgment of Co-ordinate Bench passed in C.W.J.C. No.10558 of 2024 is as follows:-

2. The petitioner submits that the instant writ petition may be disposed of in the same line as decided by the Coordinate Bench, if there is any vacancy available in the Health Department.

3. The petitioner does not have any vested right to claim regularization in respect of the vacant posts because he is absolutely contractual employee. He was not appointed on contractual basis by the Health Department, Government of Bihar. However, his service is accepted by the Department of Health through different Hospitals on being engaged by outsourcing Agency.

4. It is needless to say that there are number of outsourcing Agency operating in different establishments of the Government of



Bihar. The employees, who being appointed as contractual employees or daily wage workers render their service to the Government establishment. However, for rendering service to the Department, they are not automatically entitled to be regularized in respect of the vacancies.

5. The petitioner is not the holder of any civil post, nor he is a Government servant of the Health Department in which he has been appointed on contract basis for specified period. Therefore, he cannot claim any equitable relief under Article 226 of the Constitution of India.

6. The instant writ petition is liable to be dismissed.

7. However, from the letter dated 8th August, 2020, it is found that the petitioner is getting salary @ Rs. 8342/-. The Health Department/Hospital authority has been paying the said amount from public exchequer to the outsourcing Agency and the outsourcing Agency pays the said amount to the petitioner and similarly placed workers. Since the petitioner render service to the Government Department, he and other similarly situated contractual employees are entitled to a salary/honorarium/stipend @ stipulated under the Minimum Wages Act. Non payment of salary, mentioned in the Minimum Wages Act, and acceptance of service from the said contractual employees is unfair, unjust and coercive in nature on the part of the State.



8. *In Daily Rated Casual Labour employed under P & T Department Vrs. Union of India, reported in (1988) 1 SCC 122, the Honble Supreme Court observed:-*

"We are of the view that such denial amounts to exploitation of labour. The government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages it may be that the casual labourer has agreed to work on such low wages. That he has done so because he has no other choice. It is poverty that has driven him to that state. Government should be a model employer. We are of the view that on the facts and in the circumstances of this case classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to the employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable."

*"This question of utilizing the services of casual labour for years together without their regularisation was considered by the Supreme Court in **Gujarat Agricultural University v Rathod Labhu Bechar**, reported in **2001 (AIR) SCW, 351**, where the Court held that where such employees have been in continuous service of 10 years with not less than 240 days a year they are entitled to be regularised. On the plea of lack of fund and huge*



workforce to be regularised the Court said that they are to be balanced. On the point of opposition that many of the casual employees may not have the requisite qualification, the Court said that the impediment of lack of requisite qualification should be overcome by taking into consideration of long experience."

9. In the instant matter, this Court unfortunately comes across the oppressive and exploiting nature of the State where the State Government has been receiving the services of casual workers, appointing them in different Departments, at a rate of wages below the Minimum Wages, prescribed under the Minimum Wages Act and the notification issued by the State Government time to time. This cannot be permitted.

10. In view of such circumstances, while dismissing the instant writ petition the respondents authorities are directed to take necessary measure within 30 days from the date of this order so that petitioner and similarly placed employees can get their salary under the Minimum Wages Act.

11. It is made clear that this order is not binding upon the respondents only, the order is binding to all Departments and establishments, who have engaged and obtained services of persons through outsourcing Agencies

12. Therefore, a copy of this order be sent to the Chief Secretary, Government of Bihar for direction to the different Departments and



establishment for making necessary arrangement for payment of salary/honorarium/stipend to the outsourcing daily wage workers @ recent circular published by the State Government under the Minimum Wages Act.”

8. In the light of the submissions made, it transpires to this Court that the order contained in Memo No. 601(12) dated 02.07.2024 is a well reasoned order and there is no need of any interference as an outsourcing employee cannot demand regularization. Such employees do not have any vested right to claim regularization in respect of the vacant post as they are contractual employee appointed by outsourcing Agency, but they are definitely entitled for minimum wages. In this view of the matter, this Court finds that the petitioner is not entitled for regularization, but only entitled for minimum wages as per the recent Circular published by the State of Bihar.

9. With the aforesaid observations, the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	13.09.2024
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