

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6491 of 2018

1. Ramesh Paswan S/o late Gajadhar Paswan R/o Village- Narayanpur, P.S. Patahi, District-Muzaffarpur.
2. Lakshmi Prasad S/o late Ram Briksha Prasad R/o Village- Dharampur, P.O. Kharaunadih, P.S. Sadar, District- Muzaffarpur.
3. Sanjay Kumar S/o late Uma Prasad Singh R/o Village- Madan Chhapra, P.O. Ftehabad, P.O. Paru, District- Muzaffarpur.
4. Anil Kumar Singh S/o Sri Surendra Singh R/o Sakarwara, P.O. Jarang, P.S. Gayghat, District- Muzaffarpur.
5. Indu Bhushan Sahai S/o Sri Hriday Narain Sahay R/o Village- Senduarigajsingh, P.S. Motipur, District- Muzaffarpur.
6. Md. Neyaz S/o late Md. Sayeed R/o Village- Pakari Pakohi, P.S. Karja, District- Muzaffarpur.
7. Arvind Kumar S/o Sri Nageshwar Pandey R/o Village- Maisahan, P.O. Singar Phulkaha, P.S. Kanti, District- Muzaffarpur.
8. Amal Prasad S/o late Thakur Sah R/o Village- Gahiri Kothi, P.O. Victoria Mission, P.S. Nautan, District- West Champaran.
9. Ramnarayan Prasad S/o late Bhairav Prasad R/o Village- Shripur Rampur, P.S. Sugauli, District- East Champaran.
10. Ashok Kumar S/o Sri Ramchandra Tiwari R/o Village- Janerawa, P.O. Areraj, P.S. Areraj, District- East Champaran.
11. Mritunjay Kumar Srivastava S/o late Purusottam Prasad R/o Village- Damodarpur, P.S. Malahi, District- East Champaran.
12. Sunil Kumar S/o late Dasharath Prasad R/o Village- Senduari Gajsingh, Post- Bakhri, P.S. Motipur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Animal Husbandry Department, New Secretariat, Government of Bihar, Patna
3. The Director, Animal Husbandry Department, New Secretariat, Government of Bihar, Patna
4. The Regional Director, Animal Husbandry Department, Muzaffarpur.
5. The District Animal Husbandry Officer, District- Muzaffarpur.
6. The District Animal Husbandry Officer, Motihari, District- East Champaran.
7. The District Animal Husbandry Officer, Bettiah, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma, Adv.
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-02-2024

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

2. The present writ petition has been filed with the
following relief(s):-

“(i) For issuance of an appropriate writ in the nature of CERTIORARI and/or any other appropriate writ/writs, order/orders, direction/directions for quashing of speaking order as contained in letter no. 11 Ni. Vidhi. (3) 02/2012/2488(Ni) dated 28.07.2017 issued by the Director, Animal Husbandary (Respondent No. 3) as contained in Annexure- 22, whereby and where under representation of the petitioners have been rejected mainly in view of circular of the Personnel and Administrative Reform Department as contained in Memo No. 489 dated 10.05.2005 and Memo No. 639 dated 16.03.2006 and others circulars mentioning the order passed by this Hon’ble Court in L.P.A. No. 473 of 2014 dated 19.08.2016 and C.W.J.C. No. 7542 of 1996 dated 08.07.2013 saying that case of the petitioners does not come in parameter/minimum service period

determined by the Personnel and Administrative Reform Department (at present known as General Administrative Department), Government of Bihar, Patna. And further observing therein is that petitioners have not worked continuously 5 years (at least 240 days in every year). But the respondent no. 3 failed to consider that the services of the petitioners were already regularized by the department and but they have been terminated from their services without providing them an adequate opportunity of hearing, which is violation of Article 311(2) of the Constitution of India.

(ii) For quashing of the order of termination dated 26.06.1996 as contained in Annexure- 18 (series) with this writ application issued under the signature of Regional Director, Animal Husbandary Department, Muzaffarpur, whereby and where under the services of the petitioner nos. 1 to 8 and 10 to 12 have been terminated by the respondent no. 4 and so far as petitioner no. 9 is concerned, he has been orally terminated and pursuant to the said order of termination the salary of the petitioners were stopped from the order of termination.

(iii) For issuance of an appropriate writ in

the nature of mandamus for commanding and directing to the respondent authorities to reinstate the petitioners in service with all back wages and arrears of salary since the date of issuance of order of termination till date.

(iv) For a declaration that the order as contained in Annexure- 18 (series) terminating the services of the petitioners is illegal, capricious, un-reasonable, unconstitutional, without jurisdiction, violation of Article 14 and 311(2) of the Constitution of India and abuse of power vested in the respondent no. 4.”

3. Learned counsel for the petitioners submits that petitioner no. 1 along with others were initially appointed on daily wages basis for the period of six months by the Regional Director, Animal Husbandary, North Region, Muzaffarpur vide order as contained in Memo No. 1244 dated 09.06.1998. Similarly, petitioner no. 2 was appointed vide order as contained in Memo No. 797 dated 14.04.1998. Petitioner no. 3 was also appointed vide order as contained in Memo No. 7 dated 21.01.1994. Petitioner no. 4 was also appointed vide order as contained in Memo No. 212 dated 30.12.1993. Petitioner no. 5 was also appointed vide order as contained in Memo No. 1952 dated 05.12.1987. Petitioner no. 6 was also appointed vide order

as contained in Memo No. 214 dated 31.12.1993. Petitioner no. 7 was also appointed vide order as contained in Memo No. 1244 dated 09.06.1988. Petitioner no. 8 was also appointed vide order as contained in Memo No. 1948 dated 04.12.1987. Petitioner no. 9 was also appointed vide order as contained in Memo No. 1244 dated 09.06.1988. Petitioner no. 10 was also appointed vide order as contained in Memo No. 1684 dated 01.08.1988. Petitioner no. 11 was also appointed vide order as contained in Memo No. 1982 dated 08.12.1987. And petitioner no. 12 was also appointed vide order as contained in Memo No. 1244 dated 09.06.1988.

4. Learned counsel for the petitioners further submits that petitioners were started working in the Department of Regional Director, Animal Husbandry, North Region, Muzaffarpur but their salaries were withhold after 28.10.1991 vide letter no. 224 dated 25.04.1996. In the year 1996 dated 26.06.1996, their services were terminated and no protection under Article 311(2) of the Constitution of India have been provided to them. Thereafter, the petitioners moved before this Hon'ble Court in C.W.J.C. No. 7542 of 1996 which was decided on 08.07.2013. Against the said order, the State has preferred L.P.A. No. 473 of 2014 which was disposed of with certain observations.

5. Learned counsel for the petitioners further submits that the petitioners are entitled to be considered for regularization in the service in view of the Circular of 2005 *i.e.* Government Circular No. 489 dated 10.05.2005 and Principal Secretary, Animal Husbandary, Government of Bihar was directed to take appropriate action in accordance with law. Subsequently, the petitioners have filed representation before the Principal Secretary, Animal Husbandary, Government of Bihar with a prayer of regularization of their services against sanctioned and vacant Class IV post. The State of Bihar has preferred L.P.A. No. 473 of 2014 which was disposed of vide order dated 19.08.2016. The said order has been annexed as Annexure- 21. The specific observation in the said order is as follows:-

“The order, dated 8th July, 2013, passed in C.W.J.C. No. 7542 of 1996, is the subject matter of the challenge in the present appeal wherein the Principal Secretary, Animal Husbandry Department, Government of Bihar, Patna, was directed to consider the claim of the petitioners-respondents in terms of the Circular No. 489 dated 10.05.2005.

Since, the matter has been directed to be decided by the State Government, we do not find that State can have any possible

grievance against such a direction. However, while deciding the claim of the writ petitions in the light of the said Circular, the State shall take into consideration the Circulars issued from time to time including Full Bench decision of this Court reported in 2013(1) P.L.J.R., 964 (Ram Sevak Yadav Vs. The State of Bihar & Anr.).

This appeal is disposed of in the terms of the above terms.”

6. Learned counsel for the petitioners further submits that when the said order has not been complied, the petitioners have preferred M.J.C. No. 1584 of 2014 before this Hon’ble Court for issuing contempt against the respondents. In the said M.J.C., the speaking order has been annexed by the Director, Animal Husbandary Department dated 28.07.2017 and the M.J.C. was disposed of granting liberty to the petitioners vide order dated 24.11.2017 that if the grievances still subsist, then petitioners shall have liberty to challenge the same in accordance with law. Thereafter, the petitioners have preferred the present writ petition in which these points have been raised that the respondent has neither considered the circular nor the Full Bench decision of this Court in case of ***Ram Sevak Yadav Vs. The State of Bihar & Ors.*** reported in ***2013(1) PLJR 964***. He further submits that the said order which is impugned here is

Annexure 22. He further submits that in the said order, the decision has not been taken in the light of the said Full Bench decision in case of ***Ram Sevak Yadav Vs. The State of Bihar & Ors. (supra)***. He further submits that he has annexed one more decision dated 03.08.2017 passed in C.W.J.C. No. 23479 of 2012 in which other persons have granted relief by this Court.

7. Learned counsel for the State on the other hand submits that the petitioners have no case, due to the reason that this Hon'ble Court at the time of deciding the L.P.A. has categorically directed to consider the circulars as well as the Hon'ble Full Bench decision. He further submits that the said circular he has attached as Annexure- A *i.e.* Circular dated 28.10.1991 and Circular dated 03.12.1980. He categorically submits that according to the said circular, the appointment had to be made by a Competent Committee formed by the District Magistrate as a Member, the District Welfare Officer, the District Employment Officer, three senior officers from the different departments and two officers from the concerned department headed by the District Magistrate.

8. Learned counsel for the State further submits that the present petitioners are admittedly not appointed by the Committee. They have been appointed by one person, whose appointment has been tested up to the Hon'ble Supreme Court

and it has been decided that appointment made by the said person has been declared nullity. He further submits that the Full Bench decision of ***Ram Sevak Yadav Vs. The State of Bihar & Ors. (supra)*** is also not in favour of the petitioners. The conclusive portion of the said Hon'ble Full Bench decision is as follows:-

“43. We therefore sum up our conclusions and answer the reference as follows:-

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized, if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal

opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any Court orders.”

9. Learned counsel for the State further submits that in the said Full Bench decision in which it has categorically mentioned in paragraph 43(B) that an illegal appointment void *ab initio* made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances. He further submits that in case of the appointment of petitioners, it is not mere irregularity rather it is basically illegality which cannot be cured at any stage.

10. In the light of the submissions made, this Court is of the firm view that the appointment of petitioners had not been made by the Committee rather it was made by the individual officer and his appointment was tested up to the Hon'ble Supreme Court.

11. It also transpires to this Court that the appointment of petitioners were not in accordance with the circular annexed in the counter-affidavit. Admittedly, the petitioners were removed from service in the year 1996 and they are still not in service and therefore, due to the reason that their appointment was illegal, even then they want regularization in the light of the Full Bench decision is not permission with the view of this Court.

12. As such, there is no merit in this case and therefore, the present writ petition is hereby dismissed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	NA