

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 16629 of 2023

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Sri Krishna Prasad, Son of Late Sidheshwar Prasad, resident of Village-Kulna, Post Office-Kusumhar, Police Station-Akbarpur, District-Nawada, presently residing at Mohalla-Pant Nagar By Pass Road, P.S. Vishnupad, District Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the State Transport Commissioner, Department of Transport, Government of Bihar, Patna.
2. The State Transport Commissioner, Department of Transport, Government of Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
4. The Joint Transport Commissioner, Department of Transport, Government of Bihar, Patna.
5. The District Transport Officer, Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s : Mr. Anil Kr. Singh, GP-26

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

2 29-04-2024 1. The Petitioner has filed the instant writ petition for the following reliefs:-

(i) Issuance of writ in the nature of mandamus for a direction to the Respondent authority to regularize the services of the



Petitioner from the date of his initial date of appointment i.e. 27.05.1981 on the post of Lower Division Clerk instead of 23.01.2018 accordingly to shift the date of regularization as the Petitioner was continuously worked on the post of Clerk for 35 years before regularization and many juniors to the Petitioner has already been regularized before the regularization of the Petitioner and the Hon'ble Court has already held that the past service rendered as daily wages shall be counted for the pensionary benefits as well as other promotional benefits like ACP/MACP promotion.

(ii) Issuance of further direction to the Respondent authority to grant the pensionary benefits of pension, gratuity etc. as well as arrears of pension to the Petitioner under the old pension Scheme after taking into account the regular and uninterrupted service rendered by the Petitioner as daily wages employee since 27.05.1981 in the light of catena of judgment passed by the Hon'ble Court as the Hon'ble Court held that the past service rendered as daily wages shall be counted for the pensionary benefits.

(iii) Issuance of further direction to the Respondent authority to grant the benefits of ACP/MACP to the Petitioner after taking into account the service rendered as daily wages on the post of Clerk.



2. It is the case of the Petitioner that he was appointed as a daily-wage worker against the sanctioned post of Clerk on 27th of May, 1981, in the office of District Transport Officer, Muzaffarpur. Subsequently, he was given additional charge of works of the Motor Vehicle Inspector, Sitamarhi by an order dated 23rd of December, 1991, issued by the State Transport Commissioner. Subsequently, he was transferred from Muzaffarpur to Gaya and again from Gaya to Darbhanga, either on the order of the State Transport Commissioner or Joint Transport Commissioner. Finally, he was posted in the headquarters at Patna.

3. It is contented by the Petitioner that though he was appointed as daily-wage worker, the Respondent Authority used to treat him as a regular employee of the Transport Department. Subsequently, the State Government took a policy decision to regularize the service of the daily-wage employees under the said policy. The Petitioner requested the Respondent Authority to consider his case for regularization but he was not regularized. Finally, the Petitioner was compelled to file a writ petition before this Court under Article 226 of the Constitution of India, which was registered as C.W.J.C. No. 2243 of 2000. The said writ petition was disposed of by the Hon'ble Single



Judge of this Court *vide* order, dated 12th of March, 2008 with the following directions:-

“In those circumstances, the writ petition is allowed and the State Government and in particular, the Transport Department of the State Government is directed to consider the case of regularization of the Petitioner at an early date but not later than three months from the date of service of a copy of this order upon the Commissioner of Transport Department of the State.

This disposes of the writ petition.”

4. Against the said order, the State of Bihar preferred L.P.A. No. 561 of 2008, which was dismissed in *limine vide* order dated 28th of July, 2008.

5. It is further stated by the Petitioner that in spite of order passed in C.W.J.C. No. 2243 of 2000, which was affirmed in appeal by this Court, the Transport Department referred the case of the Petitioner along with others to the Personnel and Administrative Department, Government of Bihar, Patna. The said department returned the cases referred to by the Transport Department on 6th of January, 2009, stating that the cases were not remanded to the Committee of the Secretaries. Again, contrary to the direction of the Hon'ble High Court, the State Transport Commissioner, Respondent No. 2 herein, by his order



dated 7th of October, 2009, constituted a committee of Joint Secretaries and Under Secretary in the Department of Transport to consider the case of the Petitioner and others, thereby flouting and disobeying the order of this Court passed in C.W.J.C. No. 2243 of 2000, which directed the Transport Commissioner to consider the case of the Petitioner within a period of three months from the date of service of a copy of the order. By an order, dated, 1st of February, 2010, the Petitioner's claim for regularization was rejected by the Department as the Respondents had violated the order of this Court by not completing the exercise, as directed within the time frame. The Petitioner filed a Contempt Petition, being M.J.C. No. 2257 of 2008. During the pendency of the said Contempt Petition, the Department had issued an order on 1st of February, 2010, stating that the Petitioner has not fulfilled the eligibility criteria as laid down in the case of Uma Devi and rejected the claim of the Petitioner for regularization. This compelled the Petitioner to file another writ petition, bearing C.W.J.C. No. 7852 of 2010. The said writ petition was disposed of *vide* order dated 20th of November, 2013 with the following direction: -

“... 15. I have heard the counsel for the parties. It would appear from the materials on record that the case of petitioner Krishna



Prasad (C.W.J.C. No. 7852 of 2010) would be distinguishable from the case of other petitioners because of a judicial order directing his case to be considered favourably in the light of the findings recorded in the said case. As appeal bearing L.P.A. No. 561 of 2008 was too rejected by order dated 28.07.2008 (The State of Bihar & Ors. Vs. Shri9 Krishna Prasad). I further find that the order rejecting regularization does not make any mention or reference to any finding recorded in order dated 12.03.2008 passed in C.W.J.C. No. 2243 of 2000 (Sri Krishna Prasad Vs. The State of Bihar & Ors.). This Court had given specific reasons for consideration of his case favourably. In the circumstances, the impugned order passed by the Transport Commissioner dated 01.02.2010, so far as it relates to petitioner Sri Krishna Prasad (C.W.J.C. No. 7852 of 2010) is set aside and the matter is remitted to the Department for regularization in light of order in the said case.”

6. The Transport Department in the Government again preferred an appeal against the order passed in C.W.J.C. No. 7852 of 2010, which was registered as L.P.A. No. 549 of 2014. The said appeal was allowed and the order passed in C.W.J.C. No. 7852 of 2010 was set aside, which led the Petitioner to prefer a Special Leave Petition, being SLP No. 13528 of 2015



before the Hon'ble Supreme Court. The Hon'ble Supreme Court, upon hearing the parties, was pleased to allow the above-numbered SLP *vide* order dated 10th of March, 2017 and set aside the order dated 10th of September, 2014, passed in L.P.A. No. 549 of 2014. The Hon'ble Supreme Court directed the Respondent Authority to consider regularization of the Petitioner within three months. Finally, the Petitioner was regularized by the Respondents *vide* order dated 23rd of January, 2018 and he was posted in the office of District Transport Officer, Jehanabad. The Petitioner retired from service on superannuation on 31st of March, 2021 from the office of District Transport Officer, Jehanabad. However, the Petitioner was re-employed in the office of District Transport Officer, Jehanabad in the post of Lower Division Clerk as contractual employee *vide* order dated 25th of June, 2021 for a period of two years. That on 10th of August, 2023, the Petitioner submitted a representation before the State Transport Commissioner, Bihar at Patna and requested him to regularize his service w.e.f. 27th of May, 1981 instead of 23rd of January, 2018 and to grant him the pension as well as other retiral benefits under the Old Pension Scheme. The said representation was not acceded to by the Respondents, so is the instant Writ.



7. A counter affidavit has been filed on behalf of the Respondent Nos. 1, 2, 4 and 5. It is contended on behalf of the Respondents that the Petitioner was appointed as a daily-wage earner in the office of District Transport Officer, Muzaffarpur on 27th of May, 1981 on the basis of an oral order issued by the then Transport Commissioner. Since then, he had been transferred from one office to another till 31st of December, 2010. It is also submitted by the Respondents that in compliance of the order, dated 12th of March, 2008, passed by this Court in C.W.J.C. No. 2243 of 2000, the Transport Department considered the representation of the Petitioner and rejected the same *vide* Departmental order bearing No. 384, dated 1st of February, 2010. It was held in the said order that there was no sanctioned or vacant post, pursuant to which the service of the Petitioner would be regularized. The Respondents have narrated serially the institution and disposal of different writ petitions and appeals. In paragraph 9 of the counter affidavit, the Respondents have admitted that the Hon'ble Supreme Court disposed of Civil Appeal No. 3917 of 2017, arising out of Special Leave Petition No. 13528 of 2015, against the order passed by the Division Bench of this Court in L.P.A. No. 549 of 2014. It was directed by the Hon'ble Supreme Court: -



“Having regard to the facts and circumstances of the present case, particularly, the period for which the appellant has already worked, we are of the view that the order of the Division Bench is not justified.

Accordingly, we allow this appeal and set aside the order of the Division Bench and restore the order of the learned Single Judge.

The matter may now be considered by the Department within a period of three months in accordance with law.

Pending application(s), if any, shall also be disposed of.”

8. In the light of the order passed by the Hon'ble Supreme Court, the Transport Department had sought for opinion from the Law Department as the Petitioner was neither appointed by the competent authority nor against any sanctioned post. Thus, the case of the Petitioner cannot be covered within the scope of the decision rendered by the Hon'ble Supreme Court in the case of the ***State of Karnataka & Ors. v. Uma Devi & Ors.***, reported in ***(2006) 4 SCC 1***. Finally, the Transport Department has given benefit of age relaxation, eligibility criteria and absorbed the Petitioner in the general cadre in the post of Lower Division Clerk by an order, bearing no. 487, dated 23rd of January, 2018, w.e.f. the date of the order.



Subsequently, the Petitioner retired from service on 31st of March, 2021. Subsequent to his retirement, the Petitioner has prayed for regularization from his initial date of appointment as daily-wage earner and also prayed for benefits of ACP/MACP as a regular employee working in an establishment for more than 10 years.

9. It is contended on behalf of the Respondents that the Petitioner is not entitled to such relief and the writ petition is liable to be dismissed.

10. The Petitioner has filed a reply to the counter affidavit, reiterating his stand made in the writ petition.

11. The learned Advocate for the Petitioner submits that the Petitioner had to accept his order of regularization w.e.f. 23rd of November, 2018, because of the fact that he was not in a position of having bargaining power against the State Authority.

12. In support of his contention, he refers to the paragraph 89 of Central ***Inland Water Transport Corporation v. Brojo Nath Ganguly***, reported in ***(1986) 3 SCC 156***, which is reproduced below:-

“89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our



thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to “uphold the Constitution and the laws”. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations



which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every



branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

13. The learned Advocate for the Petitioner especially submits that the Petitioner who was knocking at the door of Judiciary from the year 2000 praying for regularization of his service and his prayer was negated time and again in spite of the order having been passed by the Constitutional Courts in his favour, he had lost his bargaining power because of the inequality and great disparity of power of the Petitioner and the State Authority. He, being weaker party, was compelled to accept the order of regularization passed by the Transport Department on and from 23rd of November, 2018.

14. According to the learned Advocate for the Petitioner, acceptance of the order of regularization by the Petitioner does not mean that he gave up his right of regularization and other consequential benefits from his initial appointment w.e.f. 27th of May, 1981.

15. The orders passed in series of writ petitions,



appeals and finally the order passed by the Hon'ble Supreme Court, the claim of the Petitioner should be held to be crystallized with the order, dated 12th of March, 2008, when the Respondents were directed for the first time by the Hon'ble Single Judge of this Court, directing the State Government and in particular, the Transport Department of the State Government, to consider the case of regularization of the Petitioner at an earlier date but not later than three months from the date of service of a copy of the order. The Hon'ble Single Judge observed in the order dated 12th of March, 2008, while disposing of C.W.J.C. No. 2243 of 2000 that there was a policy for regularization of the people, who had been appointed prior to the year 1985 and that policy having not been given a go-bye and in the meantime, two persons appointed in the same Department, after the appointment of the Petitioner, having been regularized, it would be appropriate on the part of the State Government to consider favourably the case of the Petitioner for regularization in terms of the Government policy. Otherwise, there would be discrimination for no just reason.

16. The Respondents in their counter affidavit did not deny the fact that two persons, who were appointed in the Transport Department after the appointment of the Petitioner,



were regularized. Therefore, the case of the Petitioner's regularization ought to be considered at least from the date of regularization of the said two persons who were appointed as daily-wage earner after the appointment of the Petitioner and were regularized by the Department. The Respondents did not comply with the order dated 12.03.2008 in its letter and spirit. It is needless to say that the dismissal of Civil Appeal No. 3917 of 2017 by the Hon'ble Supreme Court consolidates his position w.e.f. 2008, when C.W.J.C. No. 2243 of 2000, was disposed of.

17. Last but not the least, the Hon'ble Supreme Court in SLP (C) Nos. 22241-42 of 2016 (Vinod Kumar and Ors. v. Union of India & Ors.), decided on 30th of January, 2024, observed as follows:-

“7. The judgment in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced



hereunder:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases



where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."

18. For the reasons stated above, this Court is of the view that though the Petitioner was appointed on 27th of May, 1981, as a daily-wage earner, his service was continuously taken and accepted by the State without any break from 1981 till the date of his superannuation on 31st of March, 2021. He was given specific charge in the office of District Transport Officer of Muzaffarpur, Sitamarhi, Gaya, Darbhanga, Jehanabad and



Patna. The Respondents failed to recognize the substantive nature of work carried out by the Petitioner and his continuous service akin to permanent employees runs counter to the principles of equality, fairness and intent behind the employment regulations.

19. In view of the aforesaid facts and circumstances, the instant writ petition is disposed of directing the Respondent No. 2 to dispose of the representation submitted by the Petitioner on 10th of August, 2023 in the light of the observation made hereinabove and pass a reasoned order regarding regularization and pensionary benefits, if any, at the earliest and preferably within a period of three months from the date of communication / receipt of a copy of this order.

20. With the aforesaid observation / direction, this petition stands disposed of.

(Bibek Chaudhuri, J)

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