IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18639 of 2024

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Nathuni Ray S/o Vishnudev Ray, Resident of Ward no.- 05, near Bhisa Halt, Madhopur Roshan, District- Sitamarhi, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary, Govt of Bihar, Old Secreatariat.
2. Bihar Tourism Department, Through its Principal Secretary, Ministry of Tourism, New Secreatariat Bailey Road Patna.
3. Bihar State Tourism Corporation Limited, through it Managing Director, Veerchandra Patel Path, Patna- 800001.
4. Senior Manager (Administration), Bihar State Tourism Development Corporation Ltd., Veerchandra Patel Path, Patna- 800001.
5. Commissioner of Commercial Tax, Commercial Tax Department, Bihar, Patna.
6. State Tax Joint Commissioner (In Charge), Sitamarhi Zone, Sitamarhi.
7. Deputy Commissioner of Commercial Tax, Sitamarhi Zone, Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate Mr.Abhishek Kumar, Advocate Ms.Prity Kumari, Advocate Ms.Sharda Raje Singh, Advocate Mr.Ankesh Bibhu, Advocate
For the BSTDC	:	Mr.Kumar Abhimanyu Pratap, Advocate Miss.Rushali, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 09-12-2024

Heard Mr. Anurag Saurav along with Mr. Abhishek Kumar, Ms. Prity Kumari, Ms. Shara Raje Singh and Mr.

Ankesh Bibhu, learned counsels appearing on behalf of the petitioner and Mr. Kumar Abhimanyu Pratap along with Miss. Rushali, learned counsels appearing on behalf of the Bihar State Tourism Development Corporation.

2. The petitioner in paragraph no1 of the present writ petition has sought *inter alia following relief(s), which is reproduced hereinafter as follows* -

> "*i.* For issuance of writ in the nature of certiorari for quashing of the order contained in memo No.722 dated 18.10.2024 issued under the signature of the Deputy Commissioner of State Tax (Incharge) whereby and whereunder the petitioner has been retrenchment from the job from the next due date on the basis of the operation of the said vehicle has been stopped.
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> ii. For issuance of writ in the nature of mandamus directing the respondent Corporation to absorb the petitioner on permanent basis and regularize their service on the post on which they are working from the date of their initial appointment.
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> iii. For issuance of direction in the nature of mandamus directing the respondent authority to make the payment of salary/wages to the petitioner which is due with the respondent authority and
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> iv. For issuance of any other relief/reliefs as the petitioner is entitled."

3. The brief facts of the case are that on 14.03.2014, a request letter no. 1496 was issued from the Additional Commissioner of Commercial Tax, Patna to the Bihar State Tourism Development Corporation Ltd for providing drivers on monthly payment basis. Accordingly, the Bihar State Tourism Development Corporation Ltd provided 15 drivers on

01.07.2014 and thereafter 20 drivers vide letter no. 1648 on 14.08.2014 (**Annexure-P/1**). Thereafter, vide letter dated 28.08.2024 (**Annexure-P/3**), the Commercial Tax Department stopped the operation of 15 years old government vehicle. Consequently, on 18.10.2024, the respondent authority discharged the petitioner from the duties after the vehicles have been decommissioned as there is no need of drivers (**Annexure-P/5**).

4. Learned counsel appearing on behalf of the petitioner seeks to file a detail representation before the Managing Director, Bihar State Tourism Development Corporation Ltd. for regularization of the services of the petitioner, who has continuously served from the year, 2014 till the order of termination was passed against him without giving him any opportunity of hearing.

5. The law relating to absorption and regularization is well settled. The Apex Court in the case of ***Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.*** reported in ***(2006) 4 SCC 1,*** relating to regularization of services of such employees; from whom services are being taken continuously and later on followed the same preposition in the case of **Vinod Kumar & Ors. Etc. Versus Union of India & Ors.,** in **Civil**

Appeal Nos. 5153-5154 of 2024 (arising out of **SLP (C) Nos.22241-42 of 2016**), which also reiterated the law laid down by the Apex Court in **Uma Devi(3)** (supra) by making following observations :-

> *"4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of Uma Devi (supra) to their situation.*
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> *5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme- specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified,*

merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

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. Nanjundappam [(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 regularization 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 regularize 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 regularization, 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 regularizing 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.*
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> *9. Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment."*

(Emphasis supplied)

6. Considering the submissions of the respective parties, I find it proper to direct the Additional Chief Secretary, State Taxation Department and the Managing Director, Bihar State Tourism Development Corporation Ltd. to take necessary steps to dispose of the representation of the petitioner by first determining the date of engagement of the petitioner and thereafter the date from which he was engaged through the Corporation. If it is found that the petitioner was originally appointed by Tourism Corporation and continued to work continuously till the year his service was disengaged as a result of the discommissioning of the vehicles and he was discharged on 18.10.2024 by the Tourism Department, as such, the case of the petitioner is required to be considered in the light of the laid down by the Apex Court.

7. With the above observation/direction, the present

writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2024
Transmission Date	NA