IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 3754 of 2023

1. Tara Podo Soren, aged about 54 years son of Late Rasik Soren, resident of Village Bagadar, P.O. Jaiharipur, P.S. Raneshwar, District Dumka, Jharkhand.
2. Budhan Soren, aged about 36 years, Son of Late Rubin Soren, resident of Village Purana Dumka Jaruwadih, P.O. Dumka, P.S. Dumka (Mufassil), District Dumka, Jharkhand.
3. Chandu Marandi, aged about 49 years, son of Late Bhola Marandi, resident of Village Hijila, Burudih, P.O. Purana Dumka, Dangalpara, P.S. Dumka (Muffasil), District Dumka, Jharkhand.
4. Baha Murmu, aged about 44 years, daughter of Late Jeevan Murmu, resident of Village Naudiha, P.O. Teliyachak, P.S. Dumka (M), District Dumka, Jharkhand.
5. Lukhimati Chore, aged about 47 years, daughter of Late Sonalal Chore, resident of Village Pahuwatanr, P.O. Kadrasal, P.S. Jama, District Dumka, Jharkhand.
6. Uma Rani Murmu, aged about 56 years, wife of Marshal Marandi, resident of Village Purana Dumka, Jaruwadih, P.G. Hostel, Dangalpara P.O. Dumka, P.S. Dumka (Muffasil), District Dumka, Jharkhand.
7. Chandeshwar Soren, aged about 36 years, son of Baleshwar Soren, resident of Village Tenghowa, P.O. Babhandiha, P.S. Palajori, District Deoghar, Jharkhand.
8. Marshal Marandi, aged about 57 years, son of Late Juel Marandi, resident of Village Purana Dumka, Jeruwadih, P.O. and P.S. Dumka, District Dumka, Jharkhand.

... ... Petitioners

-Versus-

1. The State of Jharkhand through the Principal Secretary, Department of Revenue and Land Reforms, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.
2. The Director, Land Records and Measurement, Department of Revenue and Land Reforms, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.
3. The Deputy Secretary, Department of Revenue and Land Reforms, Govt. of Jharkhand, having its office at Project

Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.

4. The Commissioner, Santhal Paragana Division, Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand.
5. The Deputy Collector (Establishment), Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand.
6. The Settlement Officer, Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand.
7. The Assistant Settlement Officer, Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand.

… … Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mr. Durga C. Mishra, Advocate
For the State : Mr. Mithilesh Singh, GA-IV
: Mr. Bhanu Pratap, AC to GA-IV

Reserved on 01.05.2026 **Delivered on 30.09.2026**

1. This writ petition has been filed for the following reliefs: -

"For issuance of an appropriate writ for quashing and setting aside the order dated 06.04.2023 (Annexure-10 to this writ application) passed by Deputy Collector (Establishment), Dumka (respondent no.5), addressed to the Assistant Settlement Officer, Dumka (respondent no.7), whereby and whereunder the respondent no.5 has returned the recommendation for regularization of the petitioners to respondent no.7 since under State of Jharkhand, irregularly appointed working employee, Regularization Rules of 2015 (Amended), Rule-3 (Ka) (ii), as the post is not sanctioned, therefore, regularization cannot be made.

And

For issuance of an appropriate writ(s), order(s), direction(s) commanding upon the concerned respondents to regularize the services of the petitioners, who have been working under the control of Settlement Office, Dumka, under Revenue, Registration and Land Reforms Department, on the post of Safai Moharir, since more than 20 years, pursuant to the Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, its notification no. 4871 dated 20.06.2019.

And

For issuance of an appropriate writ / writs, order / orders, direction / directions commanding upon the concerned respondent to fix the salary of the petitioners at least class-III employees, as they are working since more than 20 years, regularly without medical insurance and provident fund.

And

For issuance of an appropriate writ / writs, order / orders direction / directions commanding upon the concerned respondent to pay the salary of the petitioners with a view to Minimum Wages Act, as the petitioners are not getting any insurance, medical benefit, provident fund and they are getting the salary on piece rated, by which they are unable to maintain their family and they have rendered their services, diligently, honestly and sincerely to the best satisfaction of the concerned respondent since last more than 20 years.

And / Or

For issuance of an appropriate writ(s), order(s), direction (s) as may be deemed fit and proper for doing conscionable justice to the petitioners."

Arguments of the petitioners.

2. Learned counsel for the petitioners has submitted that the claim for regularization of the petitioners has been rejected vide impugned order dated 06.04.2023 ***(Annexure-10)*** by observing that the post on which the petitioners were seeking regularization are not sanctioned and therefore, they are not entitled for regularization under Regularization Rules 2015 (Amended) Rules 3(ka)(ii). He has also submitted that additional reason ***(2nd point)*** has been given in the impugned order by stating that claim for regularization was not made within time. However, the learned counsel for the petitioners has referred to the documents on record and submitted that the recommendation for regularization was made time and again.

3. It is submitted that the work, which is being undertaken by the petitioners, are of perpetual nature and they are engaged in preparation of the land records with respect to Settlement Office of Santhal Paragana Division at Dumka. It is further not in dispute on the basis of

material on record that the petitioners have been continuously working for last 20 years and are being paid remuneration as fixed by the aforesaid circular of the State Government.

4. Given the aforesaid facts, learned counsel for the petitioners has submitted that it is a fit case where the State should be directed to create posts for such sensitive work of the State which relates to preparation of land records and the very fact that the petitioners have been working since more than 20 years reveals that the work is of permanent nature.

5. Learned counsel for the petitioners has submitted that the action of the State in not creating such posts and using the services of the petitioners on contractual basis or making payment on the basis of circular issued from time to time, amounts to their exploitation. They have spent their whole life serving the State by preparation of land records.

6. The learned counsel has also submitted that under such circumstances, irrespective of the claim of the petitioners seeking regularization under the Rules of 2015, appropriate direction be issued upon the State to create post and consider the case of the petitioners for regularization.

7. The learned counsel has also submitted that so far as the petitioner Nos. 5, 7 and 3 are concerned, they have participated in the selection process pursuant to the advertisement. Their appointment letters and the memo, by which they have been selected, have also been placed on record.

So far as the petitioner Nos. 1, 2, 4, 6, 8, 3 and 5 are concerned, specific statement has been made in paragraph 11 giving the period for which they were working. He has further submitted that they were being paid as per the circular which is apparent from the documents placed on record. Paragraph 10 and 11 of the writ petition is quoted as under:-

> *"**10.** That the petitioners humbly state that the Settlement Officer, Dumka, has appointed pursuant to the Advertisement*

on the post of Safai Moharir after conducting written examination on 17.05.2001. The Settlement Officer has selected 50 candidates and name of petitioner No.5 stands at serial No.9, name of petitioner No.7 stands at serial No.10, name of petitioner No.3 stands at serial No.26 of the appointment letter vide memo No. 861/ii, Settlement Office, Dumka, dated 29.06.2001.

11. *That the petitioners humbly state that the petitioner No.1, 2 and 4 have discharging their duties on the post of Ujirat Bhogi Safai Moharir since 27.05.1997 and 02.06.1997, 16.06.1997 respectively, whereas the petitioner No.6 has been working since 01.06.1993, petitioner No.8 has been working since 15.05.1997 and petitioner No. 3 and 5 have been working since 09.07.2001 and to this effect, the Settlement Officer, Santhal Pargana, Dumka has issued experience certificate in their favour."*

Arguments of the State.

8. To the aforesaid ***2nd point, that claim for regularization was not made within the time,*** the learned counsel for the State has submitted that the same may not be relevant and what is relevant is that there is no sanctioned post of *Moharir* in which the petitioners were working on daily wage basis. It is the specific case of the petitioners in paragraph 6 of the writ petition that the petitioners were working on the post of *Moharir* on contractual basis as daily wager as *Safai Moharir* in Settlement Office, Dumka. He has submitted that in absence of sanctioned post, the scheme of regularization is not applicable and therefore, the impugned order dated 06.04.2023 does not call for any interference.

9. The scheme of regularization has been placed on record by the learned counsel for the State.

10. Learned counsel for the State has also submitted that this is practically the *4th round of litigation* and one such case was filed by the association also.

11. The learned counsel has also submitted that the remuneration was fixed by a circular and that circular was also challenged and ultimately there was a direction issued by this Court to consider the case in terms of the scheme for regularization which led to passing of

the impugned order dated 06.04.2023 and after examination, it was found that, interalia, the petitioners are not entitled for regularization in terms of the scheme of regularization and consequently, the claim for regularization has been declined by observing that the posts, on which the petitioners are seeking regularization, are not sanctioned posts.

12. To the submissions regarding creation of posts and then to consider the case of the writ petitioners for regularization on such posts, the learned counsel for the respondents has submitted that there is no prayer in the writ petition seeking a mandamus upon the State for creation of post and then to regularize the petitioners against such post and therefore, no such relief be granted to the petitioners in this writ petition.

13. The learned counsel has referred to the Annexure-2 which relates to the appointment of petitioner Nos. 5, 7 and 3, their names appearing at serial No. 9, 10 and 26, to submit that at the time of appointment itself, it was stipulated that these petitioners would neither claim any regularization nor claim any payment on daily wages. Rather they will be paid on the basis of the circular issued by the State Government from time to time.

14. The learned counsel has submitted that the petitioners have accepted their appointments in terms of the payment to be made by the circulars issued by the State Government from time to time, therefore, otherwise also, the petitioners are not entitled to any reliefs.

15. The learned counsel has also submitted that the earlier order passed by this Court was set-aside by the L.P.A. Court merely on the ground that no counter-affidavit was called for by the State. The learned counsel has submitted that now the counter affidavit has been filed and the State has opposed the prayer of the writ petitioners.

Rejoinder of the petitioners.

16. In response, the learned counsel for the writ petitioners has relied upon the judgment passed by the Hon'ble Supreme Court reported in ***(2025) SCC OnLine SC 1735 [Dharam Singh and Others***

vs. State of U.P. and Another] and has referred to paragraph 14 thereof which is quoted as under: -

> *"**14.** The learned Single Judge of the High Court also declined relief on the footing that the petitioners had not specifically assailed the subsequent decision dated 25.11.2003. However, that view overlooks that the writ petition squarely challenged the 11.11.1999 refusal as the High Court itself directed a fresh decision during pendency, and the later rejection was placed on record by the respondents. In such circumstances, we believe that the High Court was obliged to examine the legality of the State's stance in refusing sanction, whether in 1999 or upon reconsideration in 2003, rather than dispose of the matter on a mere technicality. The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about "rules" and "vacancy" while ignoring the core question of arbitrariness in the State's refusal to sanction posts despite perennial need and long service, cannot be sustained."*

17. However, from the facts of the said case cited by the petitioners, paragraph 4.4, it appears that earlier the mandamus was issued to the State to sanction/create certain post in terms of Commission's resolution and proposals and, thereafter, to regularise the appellants of the said case against that post with regular pay.

18. The learned counsel has also relied upon the judgment passed by the Hon'ble Supreme Court reported in ***2026 SCC OnLine SC 129 [Bhola Nath vs. State of Jharkhand]*** and has referred to paragraph 13 and 14 of the said judgment, wherein it has been held that mere contractual nomenclature of the appellants engagement in the said case did not denude them of constitutional protection. He has submitted that it has been observed by the Hon'ble Supreme Court that State having availed of the appellants' services on sanctioned posts for over a decade pursuant to a due process of selection and having consistently acknowledged their satisfactory performance, cannot, in the absence of cogent reasons or a speaking decision,

abruptly discontinue such engagement by taking refuge behind formal contractual clauses.

19. The learned counsel has submitted that ultimately it has been held that the respondent-State was not justified in continuing the appellants in the said case on sanctioned vacant posts for over a decade under the nomenclature of contractual engagement and thereafter denying them consideration for regularization.

20. The learned counsel has further relied upon the judgment passed by the Hon'ble Supreme Court reported in ***(2013) 14 SCC 65 [Nihal Singh and Others vs. State of Punjab]*** to submit that it has been held in paragraph 20 of the said judgment that there can be no justification for the State to take a defence that after permitting the utilisation to the services of a large number of people, like the appellants to the said case, for decades to say that there are no sanctioned posts to absorb them. It has further been observed that sanctioned posts do not fall from heaven and the State has to create them by a conscious choice on the basis of some rational assessment of the need.

21. The learned counsel submits that once there is a continuous requirement of *Moharir* and the State having been taken the work from the petitioners for years together, they cannot deny regularization to the petitioners merely on the ground that there are no sanctioned post.

22. The learned counsel has submitted that appropriate order be passed so that the State sanctions the post and considers the claim for regularization of the petitioners on such sanctioned post. He has submitted that such important work of the State regarding maintaining of land records should not be left upon the persons who are not regular employees of the State.

FINDINGS OF THIS COURT

23. As per the writ petition, the petitioners are working on the post of 'Moharir' on contractual basis on daily wage and they are known as 'Safai Moharir' in the Settlement Office at Dumka.

24. It has been stated in paragraph no. 7 of the writ petition that the petitioners were appointed after following due procedure after roster clearance and advertisement and have been working for a long time. The payment was made from time to time and remuneration was also enhanced at the level of the department. It is their further case that the matter regarding payment to 'Safai Moharir' was placed before the cabinet and a decision was taken that 'Safai Moharir' would be paid minimum wages at the rate of Rs. 250 per day and accordingly, a Resolution No. 65 dated 04.03.2014 (Annexure-1) was passed. Further details about each of the petitioners have been mentioned in paragraphs nos. 10 and 11 of the writ petition.

25. The petitioners vide supplementary affidavit have placed on record the following: -

a. Advertisement No. 1/92 which was published from the office of Settlement Office, Dumka, for appointment of Ujarat Safaai Moharir. In the present case, the petitioner no.6 has been appointed pursuant to the aforesaid Advertisement No. 01/92.
b. Advertisement of the year 1997 published from the office of Settlement Office, Dumka for appointment of Safaai Moharir and the petitioner no.1, 2, 4 and 8 have been appointed from the Advertisement in the year of 1997.
c. An advertisement published in the year of 2001 from the office of Settlement Office, Dumka, for appointment of Ujrat Safaai Moharir and pursuant thereto, the petitioner nos.3, 5 and 7 were appointed.

26. Admittedly, a writ petition being W.P. (S) No. 6773 of 2004 was filed by *Jharkhand Rajya Bhu-Map Ewam Bandobast-Sah-Chakbandi Karamchari Sangh,* the association of employees working as Ujarat Bhogi Safai Mohrir in various settlement offices, seeking a mandamus for absorption of its members and for restraining the

respondents from acting in pursuance of letter dated 9.11.2004 whereby the respondents decided to regularize the daily wages employees. The said writ petition was disposed of vide order dated 18.07.2005 in view of the stand taken by the State in the counter-affidavit that in the event vacancy occurs in future then appointment shall be made after advertisement and vide publicity and complying with Government rules and regulations of reservation and in that case members of association shall be given priority. The order dated 18.07.2005 is quoted as under: -

> *"Heard the parties.*
>
> *Petitioner who is representing the employees seeks mandamus for absorption of the petitioners/employees working as Jjarat Bhogi Safai Mohrir in various settlement offices and further for restraining the respondents from acting in pursuance of letter dated 9.11.2004 whereby the respondents decided to regularize the daily wages employees.*
>
> *Petitioner's case is that they have been working in different settlement offices for the last 10-15 years as piece rated employees and therefore, they may be regularized/absorbed at least on the post they are working.*
>
> *A counter affidavit has been filed by the respondents wherein it is stated that the employees/members of the petitioner-association worked on piece rated basis time to time on payment of certain amount and they have not been treated as fixed rate daily wages employees. However, it is stated in paragraph 4(c) of the counter affidavit that in the event vacancy occurs in future then appointment shall be made after advertisement and vide publicity and complying with Government rules and regularisation of reservation and in that case members of petitioner-association shall be given priority.*
>
> *Having regard to the statement made in paragraph 4 (c) of the counter affidavit, I dispose of this writ application with an observation that in future if vacancy arises, the case of the members of the petitioner association shall be considered along with others and they will be given relaxation in age also."*

27. Thus, there was a clear observation that the employees/members of the association worked on piece rated basis and they have not been treated as fixed rate daily wages employees.

However, in view of the stand taken by the State, a direction was issued that in future if vacancy arises, the case of the members of the association shall be considered along with others and they will be given relaxation in age also.

28. It is not the case of the petitioners that there has been any subsequent advertisement for filling up the vacancies and that the case of the petitioners were not considered in terms of the directions contained in the order dated 18.07.2005 passed in W.P.S. No. 6773 of 2004.

29. Another writ petition being W.P. (S) No. 1226 of 2008 was filed, interalia, by some of the petitioners of this case seeking following direction upon the respondent-State: -

> *"In the instant writ application, the petitioners have inter alia prayed for direction upon the respondents to consider the case of the petitioners for appointment on the post of Moharrir, by extending relaxation in age and giving preference, in Settlement Office. Dumka in view of order passed by this Court in W.P. (S) No. 6773 of 2004 and further prayer has been made for restraining the respondents from absorbing the retrenched Census Employees on the post of Moharrir in Settlement Office, Dumka before absorbing the petitioners on the post of Moharrirs on regular basis, who are working in Settlement office at Dumka against the sanctioned post of Moharrir.*"

30. During the pendency of W.P.S. No. 1226 of 2008, another writ petition being W.P. (S) No. 462 of 2015 was filed by some of the present petitioners seeking a direction upon the respondents to make payment of wages @ Rs. 250 per day in terms of the aforesaid decision of the Cabinet contained in Memo No. 65 dated 04.03.2014 and also relied upon by the writ petitioners of this case. The said writ petition being W.P. (S) No. 462 of 2015 was disposed of vide order dated 02.11.2015 observing that the petitioners may have a claim as per Rule framed by the State Government for Regularization vide Notification dated 13.02.2015. In the said case, Annexure-1 was the resolution bearing Memo NO. 65 dated 04.03.2014 issued by the

Revenue and Land Reforms Department, Government of Jharkhand, which specified the piece rated work of different categories of Piece Rated employees engaged in the settlement work being carried out in the State. Para-3 thereof clearly states that Rs. 250/- would be the piece rate for the various categories of work classified in Schedule-1 of the chart and clause-4 relates to the nature of work being performed by Saffai Moharir i.e. petitioners. However, the petitioners of the said case sought payment of wages as daily wages irrespective of piece rated work which they performed, by stating that it is not possible to perform the piece rated work in a particular day to get full remuneration of 250 per day. The findings of the court are quoted as under: -

> *"**4.** Though, challenge to the Resolution at Annexure-1 has also been made, but writ petition is lacking in material details and particulars even to show the exact nature of work being performed by them as Saffai Moharir who comes under Clause-4 of the Schedule-I attached to Annexure-1. Reading of the nature of work and attached Clause-4 in the Schedule indicates different nature of works for different number of plots such as Safai Samaharnalya for which Rs. 250 as piece rated wages are admissible against 200 plots to be worked against; there are other categories like preparation of plot index, copy of plot index, preparation of Goswar, etc for different number of plots such as 2000 and 100 entries respectively for achieving the target and receiving Rs. 250/- as piece rated wages. It therefore appears that classification of different nature of works have been made and is not suffering from irrationality in categorizing different nature of work even in Class-IV category of Safai Karya to fix piece rated wages at Rs. 250/- for each such category. Materials in the writ petition or submissions advanced on behalf of the petitioners do not show that classification is irrational or does not have any nexus. It is open to the State to categorize the nature of work and also to fix the quantum of remuneration for such nature of work on daily wages, piece rated wages, temporary engagement, any ad-hoc or contractual engagement for that matter.*
>
> ***5.** In the respondent's affidavit, it is clearly stated that Rs. 250/- is the piece rated wages, as per the new enhanced slab, paid to the petitioners for piece rated work on any particular*

day. The ground for interference in Resolution at Annexure-1 is not made out in law. Petitioners have sought payment of Rs. 250 per day as wages which is contrary to the Resolution at Annexure-1 dated 04.03.2014. If the petitioners perform the nature of piece rated work, they are entitled to get Rs. 250 as prescribed thereunder. So far as the third claim of the petitioners for regularization is concerned, respondents have stated that the nature of work is piece rated and the question of regularization is within the jurisdiction of the State Government.

6. *Counsel for the petitioners submits that the State Government has notified 2015 Rules for regularization by the Department of Personnel, Administrative Reform and Rajbhasha by Notification dated 13.02.2015 under which petitioners may have claim. However, rules of 2015 stipulates certain conditions including that a person has worked on daily wages for a period of ten years by the cut-off date 10.04.2006 and the work being undertaken is against the sanctioned vacant post, etc. This issue therefore are not required to be gone into, as, if the petitioners satisfy those conditions, it is open to them to pursue their claim before the competent authority.*

7. *With the aforesaid observations, writ petition stands disposed of."*

31. Thus, the writ court in W.P. (S) No. 462 of 2015 held that the ground for interference in Resolution at Annexure-1 is not made out in law. Petitioners have sought payment of Rs. 250 per day as wages which is contrary to the Resolution at Annexure-1 dated 04.03.2014. If the petitioners perform the nature of piece rated work, they are entitled to get Rs. 250 as prescribed thereunder. It was also observed that so far as the third claim of the petitioners for regularization is concerned, respondents have stated that the nature of work is piece rated and the question of regularization is within the jurisdiction of the State Government. However, the writ court also observed that the claim under 2015 Rules for regularization was to be considered by the competent authority.

32. The earlier writ petition being W.P.S. No. 1226 of 2008 was subsequently disposed of vide order dated 11.09.2017 whose portions relevant for the purposes of this case are quoted as under: -

*"**5.** After some argument, learned counsel for the petitioners submitted that after passing of order dated 02.11.2015 passed in W.P. (S) No. 462 of 2015 though the petitioners are pursuing their claim but the respondents are not taking any decision in this regard. Under such circumstances, if a direction is issued to decide the claim of the petitioner in the light of notification dated 13.02.2015 and order passed in W.P. (S) No. 6773 of 2004 in a stipulated period of time, the grievance of the petitioners shall be redressed.*

***6.** Learned counsel for the respondents though not resisted to such course of action but submitted that the petitioners are not working on contractual basis rather they are working on piece rated basis at a prescribed fixed rate, therefore, their status are quite different from that of daily wages workers or a workers who are working on contractual basis. However, he did not resile over the earlier stand made by the respondents-State made in W.P. (S) No. 6773 of 2004 wherein it has been stated that in the event of future appointment on regular basis by making advertisement by publicity Safai Moharrirs would be given priority in comparison to others.*

***7.** In view of the submissions advanced by learned counsel for the parties, it would be apposite to dispose of the writ application with a direction to respondents, in particular respondent no. 3 to take a concrete decision in the matter in the light of notification dated 13.02.2015 of Department of Personnel, Administrative Reforms and Rajbhasha and observations made in W.P. (S) No. 6773 of 2004 and pass a speaking and reasoned order, communicating a copy thereof to the petitioners, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt/production of copy of this order.*

***8.** With the aforesaid observations and directions, the writ petition stands disposed of."*

33. In the meantime, the Assistant Settlement Officer, Dumka issued a letter dated 29.01.2016 addressed to the Deputy Director Revenue and Land Reforms Department providing the list of working employees on the post of 'Safai Moharir' in the Settlement Office, Dumka and a list of 43 'Safai Moharir' with necessary details was provided in which the date of birth and the period for which they have been working etc. were furnished. It is the case of the petitioners that

that said list included the name of each of the petitioners in the present case.

34. Deputy Secretary-cum-Deputy Director, Revenue, Registration and Land Reforms Department issued letter dated 02.03.2020 addressed to all Settlement Officers of Jharkhand directing them to implement the Service Regularization Rules of 2015 which was amended vide Notification Nos. 4871 dated 20.06.2019 read with Notification no. 1348 dated 13.02.2015. It is not in dispute that so far as amendment issued vide Notification dated 20.06.2019 is concerned, the same was modifying the 2015 Rules of Regularization with regard to the cut-off date for the purposes of regularization.

35. The Assistant Settlement Officer, Dumka issued another letter dated 24.01.2023 addressed to the Commissioner, Santhal Pargana, Dumka requesting therein to regularize the 'Safai Moharir' and enclosed a detail chart of employees for necessary action which again contained the names of the petitioners. Similar letter dated 22.03.2023 was again issued giving the list of the persons for the purposes of regularization of 'Safai Moharir' who were working under the Settlement Officer, Santhal Pargana, Dumka and in this list also, the names of the petitioners have been mentioned.

36. However, the impugned order dated 06.04.2023 was passed by the respondent no. 5 and was addressed to respondent no. 7 whereby the respondent no. 5 returned the recommendation for regularization by stating that the post for which the regularization was sought was not sanctioned and therefore regularization cannot be made. For this purpose, the Authority had referred to Regularization Rules of 2015 (Amended) and Rule 3 (ka) (ii).

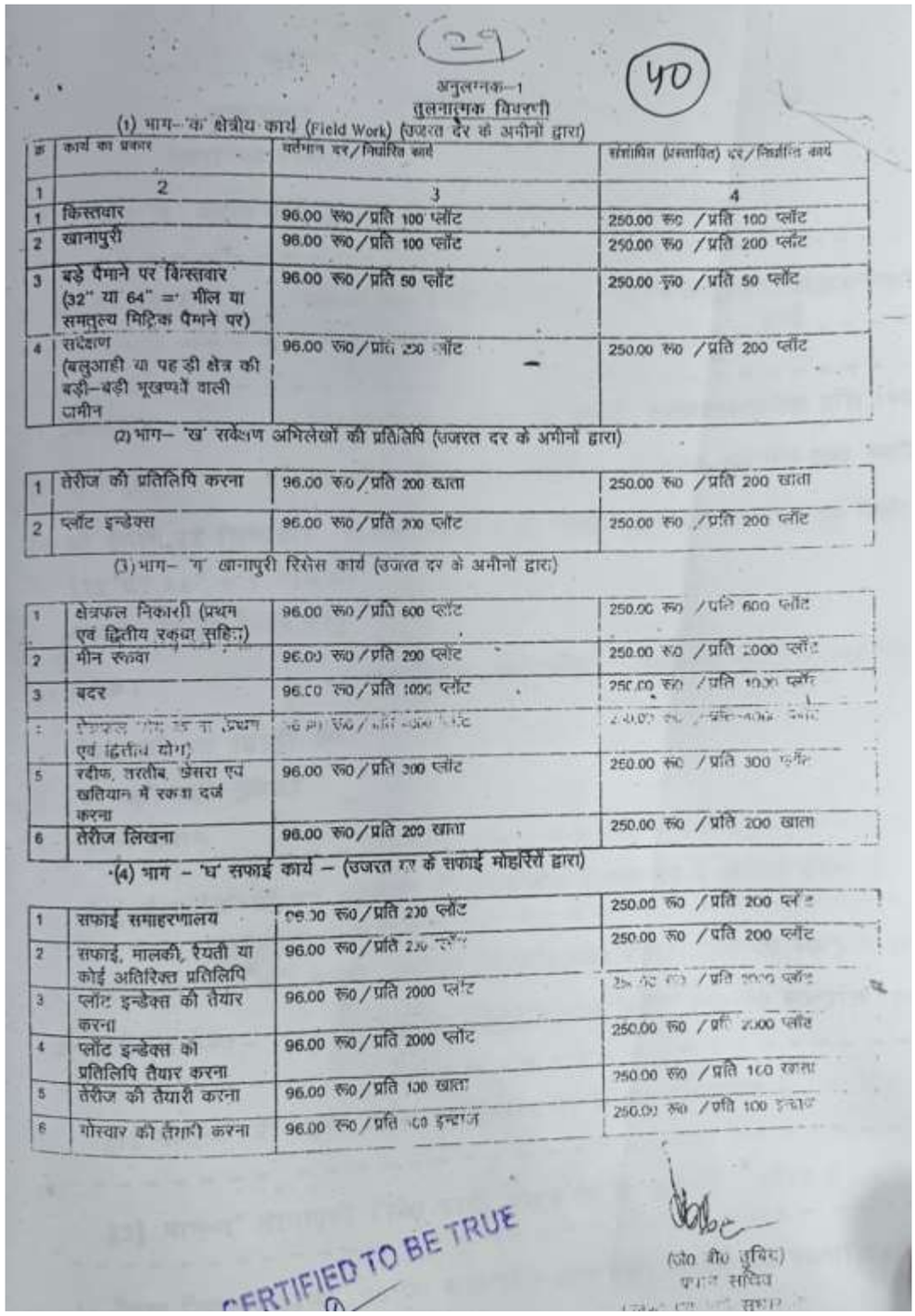
37. It is not in dispute that the petitioners were not working on any sanctioned posts and now their case is that since the petitioners were appointed after due advertisement and have been working for more than 20 years, they are entitled to regularization even if the posts were not sanctioned. It is their further argument that the respondents be

directed to create and sanction the posts and regularize the petitioners on such sanctioned posts.

38. Considering the facts and circumstances of this case including the circular dated 04.03.2014 (annexure-1), it cannot be disputed that the petitioners were working on piece rated basis. The circular dated 04.03.2014 (annexure-1) reveals that from time-to-time persons were appointed at piece rated basis and their piece rate was revised from time to time and they were being paid as per revised rate of the year 2008 and the rate was again revised in terms of circular dated 04.03.2014 to piece rate of Rs. 250/- and the rate was not on daily wage basis.

39. Even the advertisements, which have been placed on record by the petitioners by way of supplementary affidavit, reveals that the advertisements were also issued seeking applications for work on piece rated basis and last such advertisement was issued in the year 2001.

40. There is vast difference between piece rated work and daily wage work, inasmuch as, in case of piece rated work the payment is dependent upon completion of work as provided irrespective of the time spent for completion of the assigned work. The schedule to the circular dated 04.03.2014 which shows piece rated work structure which is Rs. 250/- as admissible against 200 plots to be worked for. This fact has also been mentioned in paragraph 4 of order passed in W.P. (S) No. 462 of 2015 as quoted above. The Schedule of the circular dated 04.03.2014 is embossed as under: -



अनुलग्नक–1
तुलनात्मक विवरणी

(1) भाग–'क' क्षेत्रीय कार्य (Field Work) (उजरत दर के अमीनों द्वारा)

क्र	कार्य का प्रकार	वर्तमान दर/निर्धारित कार्य	संशोधित (प्रस्तावित) दर/निर्धारित कार्य
1	2	3	4
1	किस्तवार	96.00 रू0/प्रति 100 प्लॉट	250.00 रू0 /प्रति 100 प्लॉट
2	खानापुरी	96.00 रू0/प्रति 100 प्लॉट	250.00 रू0 /प्रति 200 प्लॉट
3	बड़े पैमाने पर किस्तवार (32" या 64" = मील या समतुल्य मिट्रिक पैमाने पर)	96.00 रू0/प्रति 50 प्लॉट	250.00 रू0 /प्रति 50 प्लॉट
4	सर्वेक्षण (बलुआही या पहाड़ी क्षेत्र की बड़ी–बड़ी भूखण्डों वाली जमीन	96.00 रू0/प्रति 200 प्लॉट	250.00 रू0 /प्रति 200 प्लॉट

(2) भाग– 'ख' सर्वेक्षण अभिलेखों की प्रतिलिपि (उजरत दर के अमीनों द्वारा)

1	तेरीज की प्रतिलिपि करना	96.00 रू0/प्रति 200 खाता	250.00 रू0 /प्रति 200 खाता
2	प्लॉट इन्डेक्स	96.00 रू0/प्रति 200 प्लॉट	250.00 रू0 /प्रति 200 प्लॉट

(3) भाग– 'ग' खानापुरी रिसेस कार्य (उजरत दर के अमीनों द्वारा)

1	क्षेत्रफल निकारी (प्रथम एवं द्वितीय रकबा सहित)	96.00 रू0/प्रति 600 प्लॉट	250.00 रू0 /प्रति 600 प्लॉट
2	मीन रूलवा	96.00 रू0/प्रति 200 प्लॉट	250.00 रू0 /प्रति 2000 प्लॉट
3	बदर	96.00 रू0/प्रति 1000 प्लॉट	250.00 रू0 /प्रति 1000 प्लॉट
4	क्षेत्रफल [illegible] एवं द्वितीय योग)	[illegible]	[illegible]
5	रदीफ, तरतीब, खेसरा एवं खतियान में रकबा दर्ज करना	96.00 रू0/प्रति 300 प्लॉट	250.00 रू0 /प्रति 300 प्लॉट
6	तेरीज लिखना	96.00 रू0/प्रति 200 खाता	250.00 रू0 /प्रति 200 खाता

(4) भाग – 'घ' सफाई कार्य – (उजरत दर के सफाई मोहर्रिरों द्वारा)

1	सफाई समाहरणालय	96.00 रू0/प्रति 200 प्लॉट	250.00 रू0 /प्रति 200 प्लॉट
2	सफाई, मालकी, रैयती या कोई अतिरिक्त प्रतिलिपि	96.00 रू0/प्रति 200 प्लॉट	250.00 रू0 /प्रति 200 प्लॉट
3	प्लॉट इन्डेक्स की तैयार करना	96.00 रू0/प्रति 2000 प्लॉट	[illegible] रू0 /प्रति [illegible] प्लॉट
4	प्लॉट इन्डेक्स को प्रतिलिपि तैयार करना	96.00 रू0/प्रति 2000 प्लॉट	250.00 रू0 /प्रति 2000 प्लॉट
5	तेरीज की तैयारी करना	96.00 रू0/प्रति 100 खाता	250.00 रू0 /प्रति 100 खाता
6	गोस्वार की तैयारी करना	96.00 रू0/प्रति 100 इन्ट्राज	250.00 रू0 /प्रति 100 इन्ट्राज

CERTIFIED TO BE TRUE

(डा0 बी0 दुबिद)
[illegible] सचिव

41. The aforesaid circular dated 04.03.2014 (annexure-1) was also challenged in W.P.S. No. 462 of 2015 but the said challenge was declined vide paragraph 4 and 5 of the judgement dated 02.11.2015 passed in the said writ petition as quoted above, however, it was observed that the petitioners may have some claim in terms of the regularization rules of 2015 and if the petitioner satisfied the condition as per the regularization rules it was left open to them to pursue their claim.

42. Ultimately, by the impugned order dated 06.04.2023, the claim for regularization of the petitioners was rejected by referring to the Rules of 2015 as well as amended Rules of 2019 by holding that the case of the petitioners is not covered in view of the fact that claim for regularization could not be granted in view of Rule 3(ka) (ii) of the aforesaid rules for regularization if the employee was not working against sanctioned post. The case of 40 such persons has been rejected and out of them eight petitioners are there in the present case. Now the claim of the petitioners is that they have been working since 1992/1997/2001 and the respondents having taken work from them for such a long duration, therefore, they are entitled to regularization by virtue of such long work.

43. Since the petitioners are not covered by the rules of regularization of 2015 as well as amended Rules of 2019, the impugned order denying regularization does not call for any interference. Further, the impugned order has been passed on account of specific directions passed by this Court in W.P.(S) No. 1226 of 2008 for consideration of regularization of the petitioners in terms of the existing policy of regularization of the State Government. ***This Court finds no illegality or perversity in the impugned order rejecting the claim of regularization of the petitioners in terms of the rules of 2015/2019.***

44. However, merely because the petitioners are not covered by the aforesaid rules for regularization, the same itself is not sufficient to deprive the claim of regularization of the petitioners, particularly, in view of the fact that the petitioners were appointed after due advertisement on the post of Safai Muharir and have been working for more than 20 years though on piece rated basis. Apparently, the work of the petitioners has acquired a permanent nature of work required by the respondent-State in the matter of maintaining land record. Admittedly, the petitioners have been appointed after following a due process of selection through advertisement and they have been working on piece rated basis as decided by the State Government from

time to time. In such circumstances, the petitioners are certainly entitled for consideration of their case for regularization, but this can happen only upon creation and sanction of posts. There is no doubt that creation and sanction of posts is essentially the prerogative of the State which is a policy matter, but at the same time, the State cannot shut its eyes over the fact that they have taken work from the petitioners for last 20 years on piece rated basis and their jobs has assumed the character of perineal nature. The aforesaid exercise regarding creation of post and consideration of the claim for regularization is first required to be undertaken by the state government.

45. So far as the judgment passed by the Hon'ble Supreme Court in the case of ***Nihal Singh (***supra***)*** is concerned, paragraph 20 of the said judgment is quoted as under: -

> *"But we do not see any justification for the State to take a defence that after permitting the utilization to the services of a large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need."*

The said judgment also holds that it is for the State to create the sanctioned post.

46. Considering the fact that there was already a recommendation for the purposes of regularization of the petitioners, and creation of post is exclusive within the domain of the respondents, which is essentially a matter of policy, the respondent no. 1 is directed to consider creation of posts and also the case of regularization of the petitioners after calling for further information from the Settlement Officer, Dumka and also from the authorities at Dumka with respect to the volume and regularity of work performed by the petitioners since 1992/1997/2001 and if the work of the petitioners has been

continuous, the authority shall consider the claim for regularization upon creation of posts.

47. The respondent no. 1 is directed to consider the claim of regularization of the petitioners upon creation of posts in view of the aforesaid observations.

48. In order to enable the respondent no. 1 to take a decision in the matter, the petitioners are directed to place the information/data before the Settlement Officer, Dumka with respect to the work performed by the petitioners from time to time so as to demonstrate regularity and continuity of work and also the payment received from time to time, within a period of 3 months from today.

Upon receipt of such information, the Settlement Officer, Dumka shall verify the information/data so furnished and after verification forward the same to the respondent no.1 within 2 months from the date of receipt.

The respondent no.1 upon received the verified data/information from Settlement Officer, Dumka shall take a decision regarding regularization of the petitioners/creation of posts in view of the aforesaid observations within 4 months thereafter.

The respondent no.1 shall communicate the decision to the Settlement Officer, Dumka who in turn shall forward the decision to the petitioners.

49. This writ petition is accordingly disposed of in aforesaid terms.

50. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Dated: 30.09.2026
Uploaded On: 01.10.2026
Rakesh/Mukul