

(2015) 09 PAT CK 0073

In the Patna High Court

Case No : Letters Patent Appeal No. 1365 of 2014 in Civil Writ Jurisdiction Case No. 946 of 2007

Jai Kishun Ram and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2016) 1 PLJR 512

Hon'ble Judges : N.P. Singh, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Gyanand Roy and Sheo Nandan Mishra, for the Appellant; Kamlesh Prasad, AC to SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J—The delay in filing this memo of appeal is condoned.

2. The appellants were unsuccessful writ petitioners. They were all employed as daily wage employees in the Health and Family Welfare Department, Government of Bihar, Patna, in the Patna Secretariat. They had initially moved a writ petition for their regularization which was remanded to the Government for consideration. Upon consideration, the impugned order dated 08.09.2006 was passed. The writ petitioners challenged the decision of the Government dated 08.09.2006, by which ultimately the Committee, constituted by the Government, considered their case and rejected the prayer for regularization in view of the Government Resolution No. 639 dated 16.03.2006. The ground for refusing regularization was that, in view of Clause 3(i) of the aforesaid Resolution, they had not worked for a minimum period of 240 days continuously for each year in the last five years. The learned Single Judge held that this decision was not incorrect. He further held that such daily wagers had no right to seek regularization, and thereby dismissed the writ petition and hence, the appeal.

3. We have heard learned counsel for the appellants who are writ petitioners and

learned counsel for the State and with their consent this appeal is being disposed of at this stage itself.

4. Learned counsel for the appellants submits that whole approach of the authorities and the learned Single Judge is based on the appreciation of the Government decision as evidenced by Resolution No. 639 dated 16.03.2006. In short, he submits that Resolution is in two parts with reference to two distinct periods. The first is the period up to 11.12.1990 which is covered by the first part of the said Resolution and then Clause 3 is in respect of period thereafter. He draws our attention to the said Resolution to show that, so far as Clause 1 of the said Resolution is concerned, it contemplates of regularizing those daily wagers who had worked for 240 days prior to 11.12.1990. Whereas Clause 3(i) dealt with other cases after 11.12.1990, where the requirement was 240 days per year for the last five years. Learned counsel for the appellants would further submit that the approach of the learned Single Judge that the appellants had no right to seek regularization is wrong in view of the fact where the Government has itself taken a policy decision to grant regularization, then a right would lie in the nature of writ of mandamus to the Government to abide by its decision as that decision creates a lawful right in favour of the citizens.

5. On the other hand, learned counsel for the State submits that the appellants being mere daily wagers have no right for regularization, and hence the writ petition itself was not maintainable, and the learned Single Judge rightly dismissed the same.

6. Having considered the matter, in our view, learned counsel for the appellants is correct on both these issues. Firstly, we would like to point out that if a daily wager comes to the court with a prayer for regularization simplicitor the court could have to see whether he could be regularized which would be subject to initial entry being valid.

7. It is well established that a daily wagers has no right to continue and if that be so, simplicitor he cannot be regularized, but the situation changes. Once, the Government takes an executive decision noting that there are daily wagers who have been coming and are working for long periods on a post which has perennial requirement, then, this executive decision creates a right in favour of the daily wagers to whom it is applicable. Once, such a right is created by States' own action, then the courts cannot deny enforcement of that right and if the conditions are appropriate then it would be the duty of the State to implement their executive decision and regularize the persons covered by the said Resolution.

8. In the present case, there is no dispute that from time to time Government did take a conscious decision to regularize daily wagers. It had imposed certain conditions subject to fulfilling those conditions and subject to not falling within any of the disqualifying clause of the said Resolution. A daily wager having been brought in sanctioned vacant post had to be regularized. There is no discretion in

the matter left as has been held by the Apex Court in the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly, AIR 1971 SC 33 : (1970) 78 ITR 26 : (1970) 2 SCC 355 : (1971) 1 SCR 683 ; where discretion is coupled with the duty then it becomes imperative for a person to act and it does not remain discretionary in any way. Thus, on this ground, the learned Single Judge was clearly in error and submission of the learned counsel for the State cannot be accepted.

9. Now, we have to see as to the correctness or validity of the decision as contained in Annexure - 1 to the writ petition, by which the Committee formed by the Government rejected the claim of the appellants for regularization. This Annexure - 1 being dated 08.09.2006, the Committee clearly noting the period for which the appellants had worked in the year 1986, 1987, 1988, 1989 and 1990 each one had worked for almost a thousand days, if not more, but none of them had worked for more than 240 days in every year in the period of five years aforesaid. It is solely on this ground and no other, relying upon Clause 3(i) of the Government Resolution No. 639 dated 16.03.2006, that the claim of the appellants for regularization was rejected. Therefore, it becomes necessary for us to examine the said Resolution of the Government.

10. We may note here that recently we have decided the issue in a similar case being Letters Patent Appeal No. 1690/2013 which was allowed on 14.09.2015 (Ashok Kumar Sharma and Others v. State of Bihar and Anr.) The situation there was also identical like the present appellants. Those appellants had also worked for more than 240 days prior to 11.12.1990 and they were also disentitled to regularization solely on the ground that for five continuous years they had not worked for 240 days in every year. This court noticed the history of such a Resolution. It noted that on 01.08.1985, State had put a ban on employment on daily wage. Therefore, the first decision taken by the State in respect of regularization had been that all those who had worked for more than 240 days prior to 01.08.1985 had to be regularized. There was no restriction of 240 days per year for a period of five years. It appears that thereafter due to exigency of work and no regular recruitment, daily wagers were continued to be employed. They were not being considered for regularization, and as such, the Workers Trade Union started agitation and ultimately there was an agreement as between the Workers Trade Union and the State Government, whereby this cut off date of 01.08.1985 was extended to 11.12.1990. Thus, those daily wagers who had worked for more than 240 days prior to 11.12.1990 were liable to be regularized. This was apparent from the decision of the State Government dated 18.06.1993 which was then followed by Resolution dated 10.05.2005. The appellants were contending that in view of this they have right to be regularized. Considering the aforesaid history, there cannot be any doubt that as the appellants had worked for almost or over 1000 days prior to 1990, they were entitled to the benefit of this executive decision, but it seems while the matter was being considered by the Committee, the Government decision as envisaged by Resolution No. 639 dated 16.03.2006 came up. Keeping in mind the history, if we look at this

Resolution, we find that it is in two parts, the first part clearly refers to the first cut off date of 01.08..1985 as extended to 11.12.1990 and the trade union agreement, which stipulates that any daily wager who has worked for 240 days prior to the cut off date of 11.12.1990 would be entitled to be regularized.

11. It is this part of the Resolution that has been ignored by the Committee and apparently not brought to the notice of the learned Single Judge. This was sufficient to grant relief to the appellant instead the Committee though noted various contents of this Resolution including the limitation of 240 days prior to 11.12.1990 but then ignoring its applicability jumped to Clause 3(i) of the Resolution providing for 240 days of working in five consecutive years on yearly basis. As we have pointed out that this condition would be applicable to cases who come after the cut off date of 11.12.1990, that would not at all be applicable in case of the appellants. This is what we have held in the case of Ashok Kumar Sharma (*supra*). This is clearly applicable to the present case. They are being regularized after a long delay and they would be granted continuity of service, but they would not be entitled to any financial benefit for the period they have not worked.

12. Thus, we are afraid that the Committee of the Government officials and the learned Single Judge was in error in rejecting the legitimate claim of the appellants. Annexure - 1 to the writ petition is thus set aside, the judgment and order of the learned Single Judge is set aside. This appeal is allowed with a direction to the State to regularize services of the appellants who were the writ petitioners within a period of two months from the date of production of a copy of this order before appropriate authority.

13. This appeal is, accordingly, allowed.