
(2018) 04 PAT CK 0060

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.4174 of 2016

Ravi Prakash Tiwari

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Citation : (2018) 04 PAT CK 0060

Hon'ble Judges : JYOTI SARAN

Bench : Single Bench

Advocate : Brajesh Kumar, Anshuman Singh

Final Decision : Allowed

Judgement

Heard Mr. Brajesh Kumar, learned counsel for the petitioner and Mr. Anshuman Singh, learned AC to Advocate General.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The prayer in the writ petition is for a direction to the respondent authorities to appoint the petitioner against a Class IV post in the similar manner as

the person below him from the priority list has been appointed.

The issue stands noted in the order of this Court passed on 27.2.2018 and for the sake of convenience this Court deems it proper to reproduce the

same for it takes note of not only of the contentions advanced by Mr. Brajesh Kumar but also the opposition thereto:

â?? Heard Mr. Brajesh Kumar, learned counsel appearing for the petitioner and Mr. Sita Ram Yadav, learned Government Pleader No.16 for the

State.

Â The petitioner prays for regularization, inter alia, on grounds that he has

completed 240 days of service as on 11.12.1990 and thus is covered under Clause 2(1) of the resolution dated 16.3.2006 of the Personnel and Administrative Reforms Department, a copy of which is present at Annexure â??C? to the counter affidavit on behalf of respondent nos.4 and 5.

Although the claim of the petitioner has been contested by Mr. Yadav, learned Government Pleader No.16 in reference to paragraph 13 of the

counter affidavit to submit that in none of the years the petitioner has completed 240 days in a year and thus he is not entitled to such regularization,

but Mr. Brajesh Kumar, learned counsel appearing for the petitioner contesting the submission has relied upon two judgments of the Division Bench

reported in 2016(1) PLJR 232 (Ashok Kumar Sharma v. State of Bihar) and at page 512 of the same volume in the case of Jai Kishun Ram v. State

of Bihar to submit that the circular dated 16.3.2006 has been explained by the Division Bench to mean that all those daily wagers who had worked for

240 days even if in piecemeal manner prior to 11.12.1990, were entitled to regularization but who were employed after 11.12.1990 had to complete

240 days in each year over a period of 5 years. He submits that the circular has been interpreted by the Division Bench to classify the daily wagers in

two class. In one class are those who were employed prior to 11.12.1990 and in second class are those who had been employed after 11.12.1990. He

submits that the opinion of the Division Bench at paragraphs 4, 6 and 7 of the judgment in the case of Ashok Kumar Sharma (supra) and paragraphs 4

and 9 of the judgment in Jai Kishun Ram (supra) clarifies this position.

He thus submits that even if this petitioner has not worked for 240 days in any particular year prior to 11.12.1990 but he has worked for a period of

240 days prior to 11.12.1990 and thus in terms of the legal position settled in the judgments referred to above, the petitioner is entitled to regularization.

The chart at paragraph 13 of the counter affidavit shows that the petitioner has worked 23 days in 1983, 01 day in 1984, 212 days in 1985, 6 days in

1988 and 36 days in 1990. Thus he has worked for 278 days until 11.12.1990.

Learned counsel for the State is not in a position to inform whether or not the interpretation given by the Division Bench to the circular dated

16.3.2006 has been appealed against before the Supreme Court because in view of the position so settled by the Division Bench, the case of the

petitioner does warrant indulgence.

Allowing time to Mr. Yadav, learned Government Pleader No.16 to address on the claim of the petitioner in the backdrop of the position reflecting

from the judgments referred to above, put up this matter on 13th March, 2018 under the heading "For Orders". It is taking note of the issue in

contest that the Chief

Secretary, Bihar and the Principal Secretary, General Administration Department, were directed to file their affidavits as to whether they have

implemented the judgment of the Division Bench rendered in the case of Ashok Kumar Sharma (supra) and Jai Kishun Ram (supra) or have gone in

appeal. After several rounds of hearing that ultimately a counter affidavit is filed on behalf of the Chief Secretary, Bihar and the Principal Secretary,

General Administration Department and it is taking note of the issue in contest that the learned Advocate General through his Assisting Counsel has

chosen to assist the Court.

It is fairly conceded by Mr. Anshuman Singh, AC to AG, that of the two judgments relied upon by Mr. Brajesh Kumar, while the State has gone in

appeal against the judgment passed in the case of Ashok Kumar Sharma (supra) which was not interfered with by the Supreme Court taking note of

the nature of regularization under the Scheme but it admitted that the State did not chose to question the judgment of the Division Bench in the case of

Jai Kishun Ram (supra). In short, the opinion of the Division Bench as to the interpretation of the scheme dated 16.3.2006 in carving out a

classification in between those daily wagers who had been appointed prior to 11.12.1990 qua those appointed subsequent thereto and to hold that while

a daily wager appointed prior to 11.12.1990 had simply to demonstrate that he had worked for 240 days until 11.12.1990 even if in piecemeal manner,

those appointed thereafter had to demonstrate that they had completed 240 days of service in five continuous year, has attained finality.

Mr. Brajesh Kumar has referred to the admission of the respondents in paragraph 13 of the counter affidavit filed on behalf of respondents no. 4 and

5 to submit that while giving the details of working of the petitioner, the respondents do admit that as until 1990 he had completed 278 days of service

albeit spread over the period between 1983 to 1990 and since as per judgments of the Division Bench what is important is that the person should have

completed 240 days of service until 11.12.1990, the petitioner is entitled to the

benefit of the judgment passed by the Division Bench.

It is the submission of Mr. Brajesh Kumar that it is paradoxical that while laws granting privilege to a disabled person to join the mainstream, are being

enacted, the petitioner is sought to be outclassed on erroneous objections.

Mr. Singh, learned counsel for the State, though relies upon the same circular but is not in a position to dislodge the submission of Mr. Brajesh Kumar

which is resting on the Division Bench judgments of this Court.

For the sake of convenience this Court is tempted to reproduce some of the paragraphs of the judgment of the Division Bench rendered in the case of

Ashok Kumar Sharma (supra) and Jai Kishun Ram (supra) which supports the claim of the petitioner. It is to be noted that in each of the two cases

referred to above, put for consideration before the Division Bench, similar objections were raised by the State to deny regularization to the said

petitioners. In each of the two cases, while the petitioners therein, had completed more than 1000 days of service prior to 11.12.1990 but since they

had not completed 240 days in each of the five years preceding thereto that while regularization in the case of Ashok Kumar Sharma, had been

recalled, Jai Kishun Ram had been denied regularization. The facts noted by the Division Bench at paragraph 4 and the opinion expressed at

paragraphs 7 of the judgment in the case of Ashok Kumar Sharma (supra) are supportive of the contentions advanced herein which are reproduced

hereinbelow:

4. The learned Single Judge noted that combining the period of work from 1.1.1985 to April, 1988, the writ petitioners had worked for 240 days.

They had not worked for 240 days per year in last five (5) years, which, as per the learned Single Judge, was the requirement of the resolution for

regularization taken on 16.3.2006. That being so, the learned Single Judge held that the writ petitioners/ appellants were irregularly and illegally

regularized. Accordingly, the writ petition was dismissed.

7. Having considered the matter, in our view, learned counsel for the appellants is correct. Considering the history of events up to 1990, as noted

above, what was considered for regularization was a daily wage having worked for more than 240 days simpliciter, was the earlier State Government

decision and which had been extended pursuant to trade union agreement. This was also in consonance with the resolution of the State Government in

the Personnel Department dated

10. 5.2005, which is a part of the proceeding itself. This clearly shows that right till the year 2005, State was only contemplating regularization with

restriction that the said daily wager must have worked for 240 days. There was a clear distinction maintained when the 2006 resolution was taken.

There were two classes. First, where the State Government was bound by the trade union agreement in respect of daily wager up to 11.12.1990 and

second those who came thereafter. Therefore, there were two different categorizations in this resolution dated 16.3.2006. It is wrong to say that there

was conflict between the Clause-1 of the said resolution and Clause-3. The two contemplated two different periods. The writ petitioners/ appellants,

falling within the first period i.e. till 11.12.1990, were rightly treated and regularized as per Annexure-6 to the writ petition with effect from

22.12.2006. This distinction was not brought out clearly before the learned Single Judge because of which the learned Single Judge applied Clause-3 of

this resolution, which applied to only those people who had joined as daily wagers after 11.12.1990.â??

Â Â Â Â Â Â (Emphasis is mine) Â

Similar is the position reflecting from the observations of the Division Bench at paragraphs 9 to 11 of the judgment in the case of Jai Kishun Ram

(supra), which are also reproduced hereinbelow:

â??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 8.9.2006, 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 16.3.2006, 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

14.9.2015 (Ashok Kumar Sharma and others v. State of Bihar & 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 1.8.1985, 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 1.8.1985 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 1.8.1985 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 18.6.1993 which was then followed by Resolution dated 10.5.2005. The appellants were contending that in view of this they have right to be * 2016(1) PLJR 232.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 16.3.2006 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 1.8.1985 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 cases 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.â??

Â Â Â Â Â Â (Emphasis is mine) Â

Mr. Brajesh Kumar, learned counsel for the petitioner, has invited the attention of this Court to the regularization order issued by the respondents in

respect of others, who though were below the petitioner in the priority list but since they had completed 240 days in each of the five years, they were

granted regularization, a copy of which is enclosed at Annexure 2 to the writ petition and is dated 18.2.2013. It is submitted that the petitioners are also

entitled to the benefit of regularization with effect from the dates the said daily wagers were granted relief.

Having heard learned counsel for the parties and considering that the position regarding service rendered by the petitioner as a daily wager of 278

days as until 11.12.1990 is not in dispute, the petitioner has the support from the opinion expressed by the Division Bench rendered in the case of

Ashok Kumar Sharma (supra) and Jai Kishun Ram (supra) and is entitled to similar relief. Again since it is from the same panel in which the name of

the petitioner appears at serial no.81 that several others have been granted regularization with effect from 18.2.2013 as manifest from Annexures 1

and 2 to the writ petition, the petitioner is entitled for regularization with effect from the date the others from the said panel have been regularized.

In result, the District Magistrate, Patna (respondent no.4) is directed to issue regularization orders for the petitioner with effect from the date others

from the same panel has been given the benefit vide Annexure 2 and which order be passed within a period of six weeks from the date of receipt/

production of a copy of this order.

The writ petition is allowed.