

(2018) 10 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.7338 of 2015

Sujit Kumar @APPELLANT@Hash State of Bihar

Date of Decision : 11-10-2018

Acts Referred:

Citation : (2018) 10 PAT CK 0030

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Ajay Kumar Jha, Sadanand Paswan

Final Decision : Allowed

Judgement

1. Heard counsel for the petitioners and the respondent State.
2. By the impugned order dated 27.01.2015 issued by the Principal Secretary, PHED claim of the petitioners for regularization has been rejected. The reasons assigned in the order of rejection is that in terms of the Resolution no. 639 dated 16.03.2006, the petitioner do not fulfill the requisite 240 days in every year for five years and as such they cannot be considered for regularization.
3. Counsel for the State has also referred to Annexure B of his counter affidavit which is the details of the petitioners engagement on daily wages, which is alleged to form the basis of the decision not to regularize the petitionersâ?? service. On basis of the same it is submitted that petitioners had not worked continuously and that intermittently their services were availed and as such they have no valid claim for regularization.
4. In so far as the first reason assigned for rejecting the claim of the petitioners, this Court would observe that the same is contrary to the law as declared by the Division Bench of this Court in the case of Ashok Kumar Sharma and Ors. vs. the State of Bihar through the Chief Secretary and

Ors. reported in 2016(1) PLJR 232

5. This Court would consider it appropriate to reproduce paragraph 7 of the said judgment which reads as follows:

“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 wager having worked for more than Patna High Court LPA No.1690 of 2013 dt.14-09-

2015 240 days simplicitor, 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 10.05.2005, which is a part of the proceedings 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 wagers up to 11.12.1990 and second those who came thereafter. Therefore,

there were two different categorizations in this resolution dated 16.03.2006. 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 Patna High Court LPA No.1690 of 2013 dt.14-09-2015 daily wagers after 11.12.1990. “

6. The same judgment clearly lays down that 240 days in every year for five years is not to be insisted upon. In respect of such persons who had been

working on casual or daily wages since prior to the cut of date i.e. 11.12.1990. The State could not insist upon 240 days of work continuously for five

years. As such the reasons assigned in the impugned order dated 27.01.2015 is prima facie in violation of the decision of the Division Bench taken

note of here in above.

7. Apart from that the other reasons also assigned by the State counsel during

course of hearing in the instant proceedings is not tenable in as much as the details (Annexure 3), referred to by the counsel for the State contained at page 23 of the affidavit does not disclose that the petitioners had worked intermittently and how many days they have actually worked. Since such details have not been found in the table placed before the authority for considering the claim for regularization, this Court fails to appreciate how submissions is made that they have worked intermittently and that they could not be considered.

8. In respect of petitioner no. 2 the table shows that he had worked as a daily wager between 14.02.1990 to 31.03.1991. Similarly in respect of petitioner no. 3 the table shows that he had worked since 05.02.1988 till 31.03.1991. These two instances have been taken as an example to show that there was no details before the authority considering the petitionersâ?? claim for regularization showing that the petitioners were working for certain number of days continuously or intermittently On the contrary the same show that the petitioners were working for at least 240 days in the year. These aspects of the matter have not been considered by the authorities with reference to the number of days of their engagement in the said period while rejecting the petitionersâ?? vital claim for regularization under the impugned order dated 27.01.2015.

9. Counsel for the respondent State has emphatically submitted that in light of the decision in the case of Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. reported in (2006) 4 SCC 1, the petitionersâ?? case is not worthy of consideration. This Court would only observe that in compliance of the said judgment respondents have as a one time measure, themselves introduced the resolution dated 16.03.2006 laying down the criteria for consideration of the claim for regularization. Having done so they cannot be heard to contend that they will not afford such consideration to the petitioners.

10. In view of the aforesaid consideration, this Court would set aside the order dated 27.01.2015 issued by the Principal Secretary, PHED and remand the matter for consideration afresh in light of the resolution dated 16.03.2006 bearing no. 639 as per law declared by Division Bench of this Court in the case of Ashok Kumar Sharma (Supra).

11. Let the consideration be done by the authorities within a period of eight

weeks from the date of receipt/production of a copy of this order.

12. Writ petition stands allowed.