

(2009) 11 PAT CK 0014
In the Patna High Court

Vakil Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0014

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners and the State.

2. The petitioners were engaged as daily wage driver in Jehanabad Collectorate euphemistically described as "Umidwar". A panel of such persons expecting appointment as regular driver was prepared. They are alleged to be continuing as such from different dates as mentioned in paragraph 7 commencing from 1986 and running up to 1998.

3. There shall be a presumption in law that drivers were engaged on daily wage basis when sanction for purchase of vehicle was granted for Jehanabad Collectorate. Naturally the issue of appointment of Drivers to operate the vehicle was a necessary issue for consideration. It defies common understanding that vehicles were directed to be purchased without availability of regular Drivers and sanctioned posts. Alternately, even if purchase may have been made in urgency, soon after the purchase necessary proposal for vacancy and appointment of drivers must have been initiated simultaneously. There can be no justification for a Government in a welfare State to continue with daily wage appointments for such long duration itself reflective of the need for regular, sanctioned, vacant posts and regular personnel, It is the contention of the petitioner that regular sanctioned vacancies are available, notwithstanding which work is being taken on daily wage basis. That is a clear fraud on the Constitution when this Court cannot loose sight of the fact as noticed by the Supreme Court in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, that such appointments are made for considerations including money.

4. The law stands well settled and also reiterated in the oft repeated case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, that daily

wagers holds no post and the question of their regular appointment by absorption/regularization does not arise as it is not a mode of appointment. The said judgment only visualizes regularization of irregular appointment as distinct from illegal appointment as a one time measure. A daily wager in the interpretation of the Apex Court neither falls in the category of irregular appointee or illegal appointee and is, therefore, completely outside the purview.

5. If the Respondents have illegally proceeded to regularize/absorb any such daily wage appointee that is clearly contrary to law. There can be no invocation of Article 14 of the Constitution to demand equality and parity in illegality seeking directions that the Respondents be commanded to commit the same mistake with the petitioners. It shall be the obligation of the State to abide by the Constitution and not to perpetuate illegality by taking necessary action.

6. This Court finds it difficult to grant any positive relief to the petitioners. However, this Court directs that if there are regular sanctioned vacant post of Drivers in Jehanabad Collectorate and appointments are being made on daily wage basis against such sanctioned vacant posts without proper advertisement and selection by open merit of the competing candidates, as per the requirement of Articles 14 & 16 of the Constitution of India, the Respondents are hereby directed to publish an advertisement inviting applications from all eligible persons in accordance with law and proceed to make regular appointments. If the petitioners also apply in response to the same, they are required to be considered adequately, when issues for consideration of relaxation of their age and experience etc. shall also necessarily have to be considered by the Respondents, who appears to have led the petitioners up the garden path or at least are in tandem.

7. If such regular appointments by open competitive merit are not made within a period of six weeks, the Respondents shall be restrained from continuing with any daily wage appointee or to make any fresh daily wage appointment against such long sanctioned posts.

8. The application stands disposed.