

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.744 of 2021

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1. The State of Bihar, through Principal Secretary, Road Construction Department, Government of Bihar, Visvesvaraya Bhawan, Bailey Road, Patna.
2. The Under Secretary, Road Construction Department, Government of Bihar, Visvesvaraya Bhawan, Bailey Road, Patna.
3. The Engineer - in - Chief - cum- Additional Commissioner - cum- Special Secretary, Road Construction Department, Government of Bihar, Visvesvaraya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, (South Bihar Zone), Road Construction Department, Government of Bihar, Visvesvaraya Bhawan, Bailey Road, Patna.
5. The Additional Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
6. The Superintending Engineer, Central Circle, Road Construction Department, Chhajubagh, Patna.
7. The Executive Engineer, New Capital Sub-Division, Road Construction Department, Lodipur, Patna.

.....Appellant/s

Versus

1. Bimal Kumar Roy, Son of Late Basant Kumar Roy, Resident of C/o - Surendra Prasad Roy, Gosai Tola, Police Station - Patliputra, District- Patna.
2. Akhileshwar Kumar Verma, Son of Late Damodar Prasad, Resident of Village- Bankat, Police Station - Barauli, District- Gopalganj.

3. Dilip Kumar Sinha, Son of Late Shyam Bihari Prasad, Resident of Mohalla - Pathar - Ke- Maszid, Tikari Road, Devi Asthan, Moglani Bagh, Police Station - Sultanganj, District- Patna.
4. Ashok Kumar Sinha, Son of Late Shyam Bihari Prasad, Resident of Mohalla- Pathar - ke - Maszid, Tikari Road, Devi Asthan, Moglani Bagh, Police Station - Sultanganj, District- Patna.
5. Baban Prasad Sinha, Son of Late Ishwar Lal C/o - Maheshwar Prasad Ambastha, Resident of Mohalla - Radha Krishna Colony, Road No. 1, Police Station - Beur, District- Patna.
6. Ashok Kumar, Son of Jagnarayan Pandit, Resident of Mohalla - Nalbandtoli (Gulzarbagh), Police Station - Alamganj, District- Patna.

.....Respondent/s

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Issue for consideration: has the learned single judge committed error in not taking note of the policy decision to the extent that daily wages service cannot be counted for the purpose of fixation of pension of those daily wagers whose service have been regularized.

Contesting respondent initially appointed on daily wage basis in the in the year 1984 and their services was regularized in October, 2013 - for non consideration of contesting respondent grievance relating to counting of service rendered as a daily wager during the period 1984 to 2013- There is a policy decision of the state government to the extent that daily wage service can't be counted for the purpose of fixation of pension of whose services have been regularized -Daily wagers are not entitled to count their service or compute the service towards fixation of pension in the light of the provisions of Bihar pension Rules , scheme of regularization dated 16.03.2006 and clause imposed in order dated 30.10.2013 (petitioner regularization)

Held : the learned single judge committed error in allowing the writ petition while redressing the grievance of the respondent to the extent they are entitled to count daily wages towards fixation of pension . Daily wagers are not entitled to count their

service or compute the service towards fixation of pension in the light of the provisions of Bihar pension Rules , scheme of regularization dated 16.03.2006 and clause imposed in order dated 30.10.2013 (petitioner regularization)

Bihar Pension rules 1950-state government regularization scheme dated 16.03.2006- clause imposed in order dated 30.10.2013 (petitioner regularization)

Held: Policy decision of the state Government provides to the extent that daily wages service cannot be counted for the purpose of fixation of pension of those daily wagers whose services have been regularized. It is mentioned here that the validity of state government regularization scheme dated 16.03.2006 and clause imposed in order dated 30.10.2013 (petitioner regularization) have not been questioned by the contesting respondents . Also the cited Judicial pronouncement are not applicable as factual aspect are different. Respondent have also not provided any detail regarding vested legal right to claim for service to be counted for pension or any detail to show that they were working against sanctioned post during the mentioned period .

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6. Ashok Kumar, Son of Jagnarayan Pandit, Resident of Mohalla - Nalbandtoli (Gulzarbagh), Police Station - Alamganj, District- Patna.



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar Ambastha, SC 26
Mr. Tripurari Nath Ambastha, AC to SC 26
Mr. Santosh Kumar Mishra, AC to SC 26
Mr. Divit Vinod, Advocate
For the Respondent/s : Mr. Ajay Kumar Chakraborty, Advocate
Mr. Krishna Murari Rawt, Advocate
Mr. Pramod Kumar Pranav, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-01-2024

The present Letters Patent Appeal No. 744 of 2021 filed on behalf of the State in which appellants have assailed the order of the learned Single Judge dated 17.02.2021 passed in CWJC No. 18826 of 2018. Grievance of the respondents no. 1 to 6 in the writ petition are as under:

“That this is an application for issuance of writ in the nature of writ of certiorari, mandamus or any other appropriate writ or writs, order or direction commanding the respondents to consider the past services of petitioners rendered in non-Gazetted Capacity for pension and gratuity after superannuation from Government Service they discharged duties for more than 30 years and be further pleased to quash the Memo No. 6632(S) 28.08.2018 (Annexure-18) issued by the Deputy Secretary,



Road Construction Department, Government of Bihar, Patna by which the order/direction dated 02.05.2018 passed by this Hon'ble Court in C.W.J.C. No. 14304 of 2015 (Annexure-15) has been misinterpreted and refused to follow the direction for payment of pension and other retiral dues to retired employees under Rule 59 of Bihar Pension Rule 1950 including the Government decision contained in Memo No. Pen-1024/69/11779-F dated 12.08.1969 and arbitrarily and unlawfully rejected and disposed of the representation filed by the petitioners on 17.05.2018 in pursuant to Hon'ble Court's direction dated 02.05.2018."

2. The learned Single Judge proceeded to allow the writ petition while taking note of certain decisions like **Amarkant Rai vs. State of Bihar** reported in **2015 (2) PLJR (SC) 437**. The grievance of the contesting respondents are that they were initially appointed on daily wage basis in the year 1984 and their services were regularized in the month of October, 2013. Pursuant to the State Government policy decision dated 16.03.2006. For non consideration of contesting respondents grievance relating to counting of service rendered as a daily wager during the period from the year 1984 to 2013 has been turned down on 28.08.2018, thus the writ petition CWJC No. 18826 of 2018 was filed. The learned Single Judge allowed the writ petition while redressing the grievance of the contesting respondents to the extent that they are entitle to count daily wage service towards fixation of pension.



Feeling aggrieved by the order of the learned Single Judge State has preferred the present Letters Patent Appeal.

3. Learned counsel for the appellants-State submitted that daily wagers are not entitled to count their service or compute the service towards fixation of pension in the light of provisions of Bihar Pension Rules, scheme of regularisation dated 16.03.2006 read with clause imposed in the order of regularisation dated 30.10.2013 (petitioners regularisation). It is submitted that as long as clause-5 of the scheme of regularisation dated 16.03.2006 is not questioned by the petitioners and so also clause in their order of regularisation dated 30.10.2013 (Clause-2) they are not entitle count such daily wage service towards fixation of pension. It is submitted that the learned Single Judge has committed error in allowing the grievance of the contesting respondents. He is also relying on Full Bench decision of this Court in the case of **State of Bihar vs. Bhagwan Singh (Full Bench)** reported in **2014 (4) PLJR 229** (Para -14) it reads as under:

“14. Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service,



although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be entitled to pension for the service rendered on a substantive post from 1st January, 1979 till the date he retired from service.”

4. Per contra learned counsel for the contesting respondents resisted the aforementioned contentions and submitted that there is no infirmity in the order of the learned Single Judge. In support of contesting respondents claim and to sustain the order of the learned Single Judge he is relying on Rule 59 of the Bihar Pension Rule, decision of this Court in the case of **The Registrar General, Patna High Court vs. Ram Vyas Dubey and Ors.** decided on 26.06.2023 in LPA No. 198 of 2016 by a co-ordinate Bench of this Court, **Netram Sahu vs. State of Chhattisgarh** reported in **(2018) 5 SCC 430** and **Amarkant Rai vs. State of Bihar** reported in **2015 (2) PLJR (SC) 437**.

5. Heard learned counsels for the respective parties. Before advertng to the merits of the case it is necessary to reproduce certain provisions for the purpose of pension under the Bihar Pension Rules 1950, are as under:



“Part 1 Rule 2 of (the Bihar Pension Rules, 1950) are as under:-

“2. Except where otherwise provided these rules apply to all Government servants to whom the rules in the Bihar and Orissa Service Code apply.”

Rule 29 reads as under:-

“29. Pensionable service means service which qualifies the Government servant performing it to receive a pension from general revenues.”

Chapter VI relates to service qualifying for pension. Rule 58 reads as under:-

“58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

First-The service must be under Government. Second-The employment must be substantive and permanent.

Third- The service must be paid by Government.

These three conditions are fully explained in the following sub-rules”

Sub-Rule (2)-First Condition-Service under Government. Rule 60 reads as under:-

“60. The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants excluded from pension by this rule;

(1) Employees of a municipality,

(2) Employees of grant-in-aid schools and institutions.



(3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance.

Note 1.-If a Government servant has served partly (in a capacity which would have given his claim to pension. If the service had been paid from the general revenues), on the house hold establishment of the Governor, and partly on establishments paid from the general revenues, he is entitled from the general revenue, proportionate to the length of the service which has been so paid.”

Sub-Rule (3)-Second Condition-Substantive and Permanent Employment.

(I) General

“61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

1.

**Regarding-Temporary Service counting for Pension.*

It has now been decided that temporary service or officiating service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of--

(i) period of temporary service is non-pensionable establishment, and

(ii) period of service paid from contingencies.

The concession of counting officiating and temporary service in full for pension will be available to Government servants who are governed by the Old Pension Rules, or the Liberalized Pension Rules. [Notification No. 12928F...dated 4.9.1962. This has effect from 1.8.1962.]”



Chapter V relates to reckoning of service for pension. The petitioner's case do not fall under the aforesaid Chapter V.

Chapter VI-Conditions of Grant of Pensions. Under Section 1-Classification of Pensions petitioner's case is required to be examined under Rule 107(d) Retiring pensions vide Section v. The petitioner's case do not fall under the aforesaid provision.

“59. The Provincial Government may, however, in the case of service paid from general revenues, even through either or both of conditions (1) and (2) are not fulfilled.

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.”

6. The State Government evolved a scheme for the purpose of regularisation of daily wagers/ad hoc employees on 16.03.2006 clause-5 reads as under:

“यदि किसी विभाग/कार्यालय में रिक्ति नहीं हो तो ऐसे विभाग/कार्यालय में कोई दैनिक वेतनभोगियों को, विशेष परिस्थिति में उनके द्वारा लम्बी अवधि तक दैनिक मजदूरी कार्यरत रहे जाने के आलोक में अनुकम्पा के आधार पर विचार करते हुए उनके द्वारा वेतनभोगी कर्मों के रूप में पूर्ण किये गए वर्ष (जिस वर्ष में कम से कम 240 दिनों तक किया गया हो) के अनुसार प्रतिवर्ष के लिए 15 दिनों का नियमानुसार लागू पारिश्रमिक देकर दिया जायेगा। परन्तु ऐसा पारिश्रमिक 20 वर्षों से अनधिक अवधि मात्र के लिए देय होगा।”

7. One of the contesting respondents services were regularized on 30.10.2013 and it reads as under:

अधीक्षण अभियन्ता का कार्यालय



केन्द्रीय अंचल, पथ निर्माण विभाग, छज्जूबाग, पटना-1

कार्यालय आदेश संख्या- 2784 दिनांक-30/10/13

कार्यालय आदेश

जिलाधिकारी-सह-अध्यक्ष, जिला स्तरीय चयन समिति, पटना के ज्ञापांक 271/मु0 दिनांक 10.10.2013 के आलोक में जिला स्तरीय चयन समिति के अनुशंसानुसार दैनिक वेतन भोगी श्री विमल कुमार राय, पिता- स्व0 वसंत कुमार राय, मो0-गोसाईटोला, पो0-पाटलीपुत्रा, थाना-पाटलीपुत्रा जिला-पटना को इस अंचल के अधीन नई राजधानी पथ प्रमंडल, पटना में कार्यभारित नियमित स्थापना अर्न्तगत समूह 'घ' (वर्ग 4) खलासी के स्वीकृत पद पर पुनरीक्षित वेतनमान के पे-बैंड 5200-20200 ग्रेड वेतन 1800 में समय-समय पर सरकार द्वारा स्वीकृत भत्ते के साथ योगदान की तिथि से निम्न शर्तों के अध्याधीन नियुक्त किया जाता है :-

1. यह नियुक्ति बिल्कुल अस्थायी है तथा बिना पूर्व सूचना अथवा कारण बताए किसी भी समय समाप्त की जा सकती है।
2. यह आदेश तात्कालिक प्रभाव के लागू होगा तथा पूर्व में दैनिक वेतन भोगी या अन्य रूप में की गई सेवा की गणना किसी प्रयोजनार्थ नहीं की जायेगी।
3. उप सचिव, प0नि0वि0, बिहार पटना के पत्र सं0 8399 (एस0) दिनांक 29.10.13 द्वारा इनका अधिकतम उम्र सीमा क्षान्त करने की स्वीकृत प्राप्त हो चुका है।
4. जॉच के दरम्यान यदि यह पाया गया कि इनके द्वारा प्रदत्त प्रमाण पत्र जाली है तो इनकी नियुक्ति रद्द कर दी जायेगी, तथा इनके विरुद्ध उचित कानूनी कार्रवाई की जायेगी।
5. योगदान के समय इन्हें असैनिक शल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी द्वारा निर्गत स्वास्थ्य प्रमाण पत्र जमा करना अनिवार्य होगा।
6. योगदान के लिए इन्हें किसी प्रकार का यात्रा भत्ता देय नहीं होगा।

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अधीक्षण अभियन्ता

केन्द्रीय अंचल, प0नि0वि0, पटना



Clause -2 prohibit for counting service towards pension of the regularized person admittedly, the contesting respondents have not questioned the validity of the clause-5 of the order dated 16.03.2006 cited (supra) and so also clause-2 of order of regularisation dated 30.10.2013, in other words contesting respondents have accepted the condition imposed in both general order as well as in the order of regularisation as long as those conditions cited in the general order and regularisation order are not questioned and set aside by competent forum. The contesting respondents have not made out a case in so far counting daily wage service towards pension.

8. Be that as it may, taking note of decisions cited on behalf of the contesting respondents those decisions are not relevant for the purpose of deciding the present case. In other words factual aspects of the matter are entirely different. In those cases, Clause-5 of order dated 16.03.2006 and so also any condition imposing denial of counting of daily wage service and its challenge in their regularisation order were not the subject matter. Therefore decisions taken note of by the learned Single Judge and cited on behalf contesting respondents are not applicable to the case in hand. At this stage, it is necessary to take note of Hon'ble Supreme Court decision in the case of **Nair**



Service Society vs. Dr. T. Beermasthan and Ors. reported as
(2009) 5 SCC 545, para-48 which reads as under:

“48 Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

9. Having regard to the Nair Service Society decision the cited decision on behalf of the contesting respondents read with the clause-5 scheme in the order dated 16.03.2006 read with Clause-2 in the order of regularisation the cited judicial pronouncements are not applicable to the case in hand as long as the competent forum set aside the relevant clauses cited (supra) in the order dated 16.03.2006 and 30.10.2013.

10. The learned Single Judge has not dealt with the clause imposed in the general order dated 16.03.2006 in respect of denial of service of daily wage for the purpose of not countable and so also *suo motu* interfered and set aside, similarly in the order of regularisation Clause-2 cited supra has not been interfered



or set aside to contend that it is in violation of Article 14 or any other judicial pronouncements. Therefore, the learned Single Judge has committed error in not taking note of that there is policy decision of the State Government to the extent that daily wage service cannot be counted for the purpose of fixation of pension of such of those daily wagers whose services have been regularized.

11. In view of these facts and circumstances, the appellants have made out a case so as to interfere with the order of the learned Single Judge dated 17.02.2021 passed in CWJC No. 18826 of 2018 and it is set aside while rejecting the contesting respondents CWJC No. 18826 of 2018.

12. The Letters Patent Appeal No. 744 of 2021, stands allowed.

13. At this stage learned counsel for the contesting respondents further argued that Annexure-A1 read with Annexure-A4 provides vested legal right to count the daily wage service. Annexure-1 is general order dated 18.06.1993 which reads as under:

*[बिहार सरकार, कार्मिक एवं प्रशासनिक सुधार
विभाग, संकल्प ज्ञाप सं० 3/एम 1-1069/88 (खण्ड) का०
5940, दिनांक 18 जून, 1993 की प्रतिलिपि]]*

*विषय: राजकीय उपक्रमों एवं सरकार के
अधीनस्थ दैनिक वेतनभोगी कर्मचारियों को स्वीकृत रिक्त
पदों पर नियुक्ति में अधिमानता दिये जाने के संबंध में।*



दैनिक वेतनभागी, मास्टर रौल, आकस्मिक भृत्य आदि कर्मचारियों की नियमित नियुक्ति के संबंध में विभिन्न संघों द्वारा उठाये गये माँगों पर फरवरी, 1992 में राज्य सरकार एवं अराजपत्रित कर्मचारियों के महासंघों/समन्वय समिति के साथ निम्न समझौते हुए हैं—

“संबंधित विभाग द्वारा उनके अधीनस्थ अनुमान्य रिक्त पदों के विरुद्ध इन वर्गों के कर्मियों को आरक्षण नियम—अर्हता, पद अनुमान्यता एवं आवश्यकता तथा इस हेतु निर्धारित कट-ऑफ-डेट के आलोक में वरीयता पदों के विज्ञापन संबंधी कानून का पालन करते हुए नियमित नियुक्ति हेतु विभागीय समिति निर्णय लेगी। कार्मिक विभाग विस्तृत अनुदेश निर्गत करेगा।”

उक्त समझौते के आलोक में सम्यक् रूप से विचारोपरान्त सरकार ने निम्नलिखित निर्णय दैनिक वेतनभोगी, मास्टर रौल, आकस्मिक भृत्य आदि कर्मचारियों (जिन्हें आगे दैनिक वेतनभोगी कर्मचारी कहा जायेगा) को स्वीकृत रिक्त पदों पर नियमित नियुक्ति में अधिमानता दिये जाने के संबंध में लिया है—

1. राज्य सरकार द्वारा सरकारी कार्यालयों के दैनिक वेतनभोगी कर्मचारियों को स्वीकृत रिक्त पदों पर नियुक्ति के संबंध में समय-समय पर आवश्यक निर्देश दिये गये। यह भी निर्देश दिया गया था कि सरकारी कार्यालयों में ऐसी नियुक्तियाँ नहीं की जाये तथा दिनांक 1-8-1985 के बाद की गयी ऐसी अनियमित नियुक्तियों को रद्द कर दिया जाये। अतएव कट-ऑफ-डेट 1-8-1985 होगा, अर्थात् वैसे दैनिक वेतनभोगी कर्मचारी, जो दिनांक 1-8-1985 के पूर्व से कम-से-कम 240 दिनों से कार्यरत हैं, उन्हें अन्य परिस्थितियाँ समान रहने पर नियुक्ति में अधिमानता देने पर विचार किया जाये।

2. वर्ग 3 एवं 4 की नियुक्ति के संबंध में कार्मिक एवं प्रशासनिक सुधार विभाग द्वारा समय-समय पर निर्गत परिपत्र लागू होंगे।



3. दिनांक 1-12-1991 को विभाग/क्षेत्रीय कार्यालयों के रिक्त स्वीकृत पद की जाँच कर ली जाये।

4. दिनांक 1-12-1991 को चतुर्थ वर्ग के स्वीकृत रिक्त पदों की अनुमान्यता की जांच वित्त विभाग द्वारा निर्गत परिपत्र सं० 3110, दिनांक 10-4-1986 के आलोक में कर ली जाये।

5. स्वीकृत एवं अनुमान्य रिक्त पदों के कार्यहित में भरना आवश्यक है या नहीं, इसे ध्यान में रखा जाये।

6. ऐसे रिक्त पदों को भरने के लिए रिक्तियों की अनिवार्य अधिसूचना अधिनियम का पूर्णतः अनुपालन किया जाये।

7. संबंधित पदों पर नियुक्ति के लिए निर्धारित अर्हतायें विशेषतः न्यूनतम शैक्षणिक योग्यता एवं अनुभव का पालन किया जाये।

8. आरक्षण नियम का पूर्ण रूप से अनुपालन किया जाये।

9. उपरोक्त रूप से योग्य दैनिक वेतनभोगी कर्मचारियों की नियमित सेवा में अधिमानता में निम्नवत् समिति गठित की जाये—

- | | |
|--|-----------|
| 1. विभागीय सचिव | अध्यक्ष । |
| 2. विभागाध्यक्ष | सदस्य । |
| 3. स्थापना समिति में पूर्व से अनुसूचित जाति/जनजाति के मनोनीत प्रतिनिधि | सदस्य । |
| 4. संबंधित विभाग के स्थापना प्रभारी पदाधिकारी | सदस्य । |

10. उपरोक्त रूप से योग्य दैनिक वेतनभोगी कर्मचारियों को नियमित सेवा में अधिमानता के आधार पर वर्ग 3 एवं 4 के पद पर नियुक्ति किये जाने हेतु प्रत्येक लोक उपक्रम इकाइयों के लिय यह कार्य अध्यक्ष, लोक उद्यम ब्यूरो की अध्यक्षता में गठित निम्नांकित समिति द्वारा किया जायेगा—

- | | |
|------------------------------------|-----------|
| 1. अध्यक्ष, लोक उद्यम ब्यूरो | अध्यक्ष । |
| 2. संबंधित प्रशासी विभाग के सचिव | सदस्य । |
| 3. संबंधित उपक्रम के प्रबंध निदेशक | सदस्य । |



4. स्थापना समिति में पूर्व से अनुसूचित जाति/

जनजाति के मनोनीत सदस्य

सदस्य।

11. उपर्युक्त समिति अपने सचिवालय, निदेशालय, संबद्ध कार्यालयों एवं क्षेत्रीय कार्यालयों से वांछित सूचनायें प्राप्त कर तथा उपर दी गयी सभी शर्तों के अनुपालन की जांच कर रिक्त एवं अनुमान्य पदों पर योग्य दैनिक वेतनभोगी कर्मचारियों की अन्य बिन्दु समान होने पर उनकी वरीयता के आधार पर अधिमानता देने के लिए पैनल तैयार करेगा। पैनल तैयार करते समय आरक्षण के रोस्टर बिन्दु का पूर्णरूप से अनुपालन किया जायेगा। पैनल में आनेवाले ऐसे व्यक्ति की आयु यदि सरकारी सेवा में प्रवेश करने की आयु से अधिक पाई जाये तो उनके मामले में आयु सीमा को शिथिल करने के लिए विभागीय सचिव, आयुक्त या जो भी सक्षम पदाधिकारी हो, का आदेश प्राप्त करना होगा। ऐसे तैयार किये पैनल की सूचना सक्षम पदाधिकारी/पदाधिकारियों को समुचित कार्रवाई हेतु संबंधित विभाग/ब्यूरो के द्वारा दी जायेगी तथा वित्त विभाग को पूर्ण सूचनाओं के साथ अवगत करायेगी।

12. 1-8-1985 के बाद नियुक्त वेतनभोगी व्यक्तियों की सेवा समाप्त कर दी जाये। इण्डस्ट्रीयल डिस्प्यूट ऐक्ट से कोभरड कर्मचारियों की सेवा समाप्ति के संबंध में प्रावधानों का पालन करते हुए कार्रवाई की जाये।

13. उक्त व्यवस्था के कार्यान्वयन में यदि कोई कठिनाई हो तो कार्मिक एवं प्रशासनिक सुधार विभाग इस संबंध में आवश्यक निर्देश जारी करेगा।

पूर्णतः अनुपालन किया जाये।

14. Annexure-4 dated 15.12.2000 reads as under:

बिहार सरकार,

पथ निर्माण विभाग।

पत्र सं०-ई४/मुकदमा-111/99- दिनांक:- 15/12/2000

8940(5)

प्रेषक,



श्री अजय कुमार सिंहा,
सरकार के अपर सचिव।

सेवा में,

अधीक्षण अभियंता, केन्द्रीय अंचल, प०नि०वि०, पटना।
विषय: पथ निर्माण विभाग के क्षेत्रीय कार्यालयों के
अधीन दि० 1-8-85 तक 240 दिनों की लगातार सेवा
करनेवाले दैनिक वेतनभोगी कर्मचारियों को स्वीकृत रिक्त
पदों पर नियुक्ति में अधिमानता दिये जाने के संबंध में।
महाशय,

उपर्युक्त विषय के संबंध में अभियंता प्रमुख सह
अपर आयुक्त सह विशेष सचिव की अध्यक्षता में विभागीय
समिति की दिनांक 22-9-2000 को हुई बैठक में लिये गये
निर्णय की कार्यवाही के साथ योग्य घोषित वैसे कर्मचारियों
जो दिनांक 1-8-85 को 240 दिनों की सेवा पूरी करते हुए
आप के अधीनस्थ कार्यालय में कार्यरत हैं उनके मांगों की
सूची इस आशय के साथ भेजी जा रही है कि कार्यवाही के
सभी कंडिकाओं, समिति द्वारा लिये गये निर्णय के अनुत्त
वांछित कार्रवाई की जाय तथा उसकी सुचना अद्योहस्ताक्षरी
को भी दी जाय। साथ ही यह भी अनुरोध है कि आपके
उपभाग/अंचल से संबंधित सूची में कोई त्रुटि पाई जाय तो
उसे अविलंब प्रकाश में लाया जाय।
अनु०-यथोक्त 03 पृष्ठ में।

विश्वासभाजन

ह०/-

सरकार के अवर सचिव, प०नि०वि०, पटना।

ह०/-

15. Reading of the aforementioned documents it does not provide any vested legal right to claim for service to be counted for the purpose of pension. That apart the learned Single Judge has proceeded to draw an inference that as if contesting respondents were stated to have been working against sanctioned post in this regard he has cited Annexure-A1 cited (supra) and Annexure-A1 is not relating to counting of daily wage service to towards pension. Even the contesting respondents have not



produced any material to show that they were working against sanctioned post during the period from the year 1984 till 30.10.2013. The contesting respondents have also not questioned the validity of date of regularisation on 30.10.2013 to the extent that they are entitled to regularisation with retrospective effect as and when each of the contesting respondents completed 10 years of service in the light of Apex Court decision in the case of **Secretary, State of Karnataka and Ors. vs. Uma Devi (3) and Ors.** reported in **(2006) 4 SCC 1**.

16. Accordingly, no further order is warranted.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	
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