

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19895 of 2013

Suman Kumar Suman S/O Sant Lal Rai Resident Of Village P.O- Harpur Bhindi, P.S- Tajpur, District- Samastipur At Present Post As Amin Zila Parishad, Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Department Of Rural Development, Government Of Bihar, Patna.
3. The Director, Panchayati Raj, Government Of Bihar, Patna
4. The Deputy Development Commissioner, Samastipur.
5. The Zila Parishad, Samastipur Through Its Chief Executive Officer Cum-D.D.C., Samastipur.
6. The Chief Executive Officer-Cum- D.D.C. Zila Parishad, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. A.K. Jha, Sr. Adv
Mr. Pramod Mishra, Adv
For the Respondent/s : Mr. Venkatesh Kirti, Adv

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 23-03-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:

“That the petitioner above-named craves indulgence of this Hon’ble Court by way of issuance of any appropriate writ preferably in the nature of the Mandamus commanding and directing Respondents concerned to regularize the services of the petitioner on the post of Amin on regular pay-scale under the service of Respondent Zila Parishad, as



the petitioner has continuously been working as Amin under Zila Parishad, Samastipur on daily wages basis since 2001-2002 where-after vide Memo No.803 dated 26.03.2007 issued from the level of Respondent D.D.C. the petitioner has been appointed on contractual basis in fixed pay on vacant post of Amin considering the exigency of work and long service rendered by the petitioner, where-after even for times without number recommendation for regularization of the petitioner has been made, but nothing has been done in this regard whereas several other daily wagers employees have been regularized in the service of Zila Parishad. And/or any other relief or reliefs for which the petitioner is found entitled to in the facts and circumstances of this case.”

3. The brief facts giving rise to the present writ petition are that the petitioner being found eligible was appointed as a Amin under Zila Parishad, Samastipur on daily wages basis, considering the need and the vacancy, by the respondent D.D.C.- cum-Chief Executive Officer, Zila Parishad, Samastipur. The petitioner continuously discharged his duties as a daily wage Amin under the services of Zila Parishad till 2007. The matter with regard to regularization of the services of the petitioner was sent by the Zila Parishad to the Government for



approval and guidelines, whereupon vide Letter No. 3683 dated 25.09.2006 issued under the signature of the Director, Panchayati Raj, Bihar, Patna addressed to the D.D.C.- cum-Chief Executive Officer, Zila Parishad, Samastipur, it was directed that the decision with regard to the petitioner be taken at the level of the Zila Parishad itself and it is not possible to give guidelines in the present matter. Even in the meeting of the Zila Parishad, resolution was taken to regularize the services of the petitioner, on different occasions, but no decision was taken by the authorities of the Zila Parishad, with regard to regularization of the services of the petitioner. Subsequently, vide Memo No. 803 dated 26.03.2007 issued under the signature of the D.D.C. -cum-chief Executive Officer, Zila Parishad, Samastipur, the petitioner was appointed on Contract Basis for 11 months on a fixed remuneration of Rs. 4000/-. In the said memo, it was clearly mentioned that the engagement will be temporary in nature and the petitioner will not be entitled for any government benefits and he will have to give an undertaking/affidavit to the effect that he will not claim for any regularization in future and his services can be terminated without assigning any reason.

4. The learned Senior Counsel for the petitioner



submits that the said engagement continued and till filing of the writ petition no decision was taken on the claim of the petitioner for regularization, although he kept on filing representation before the authorities concerned.

5. The learned Senior Counsel for the petitioner submits that the petitioner has continuously discharged his duties for more than ten years and despite that no steps have been taken by the authorities of the Zila Parishad for regularization of the services of the petitioner, which is not in accordance with law, since the petitioner is entitled to be considered for regularization after completing ten years of service continuously.

6. The learned Senior Counsel for the petitioner submits that the Hon'ble Supreme Court of India in a case reported in **2015 (2) PLJR 437 (SC) Amarkant Rai. Vs. The State of Bihar and Ors** in paragraph no. 12 has held as follows:

"12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka & Ors. vs. M.L. Kesari & Ors., (2010)9 SCC 247, this Court held as under:-
"7. It is evident from the above that there is an exception to the general principles



against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:-

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

7. The learned Senior Counsel for the petitioner further submits that in view of the observation made by the Hon'ble Supreme Court of India in paragraph No. 12 in the case



of the *Amarkant Rai (supra)* the petitioner deserves to be regularized on the post of Amin in the Zila Parishad, Samastipur. On a specific query made to the learned Senior Counsel for the petitioner that whether the petitioner is discharging the duties of Amin in the Zila Parishad, continuously even today or not, the learned Senior Counsel for the petitioner fairly submits that the petitioner is not discharging the duties of Amin, continuously, in the Zila Parishad, since last many years and his services are being taken by the Zila Parishad, after making payment of his remuneration, from time to time.

8. Per contra, the learned counsel appearing on behalf of the Zila Parishad submits that in view of resolution of the Zila Parishad, the petitioner was appointed on contractual basis for a period of eleven months on a consolidated amount of Rs. 4000/- per month and in the appointment letter itself, it was indicated that the same is contractual in nature and before joining the petitioner will have to give and undertaking that in future the petitioner will not claim any regularization of his services. Further, with passage of time most of the Central Grant Sponsored Scheme and State Government Scheme have either been withdrawn or the role of the Zila Parishad has been



minimized, as a result, the volume of work has already been reduced and therefore, there is no requirement of taking work from the petitioner.

9. The learned counsel for the Zila Parishad further submits that due to poor financial condition and paucity of fund the Zila Parishad, Samastipur has not been paying regular salary to its employee and even retirement benefits have not been fully paid to its retired employees, who superannuated more than three decades ago. It has further been submitted that the Samastipur Zila Parishad does not have enough source of income to make regular payment of salary to its employees and the same has not been paid for the last sixty six months and therefore, the Zila Parishad, Samastipur is not in a position to regularize the services of the petitioner and due to reduced volume of work and financial condition, the services of the petitioner has been dispensed with long time ago.

10. Having heard the learned counsel for the parties and after going through the documents available on record, this Court finds that the petitioner has not brought on record to chit of paper to show the mode of appointment in Zila Parishad, i.e. whether he was appointed through proper selection process or his appointment/engagement was through back door entry.



Further, the services of the petitioner has long been dispensed with by the Zila Parishad and as per the statement made by the learned Senior Counsel for the petitioner himself, the petitioner is not working in the Zila Parishad, continuously, rather his services are being taken by the Zila Parishad on case to case basis, on payment of remuneration to him for each of the work done by him. Recently the Hon'ble Supreme Court of India in different pronouncement have taken a view that the persons who have been engaged on contract basis/daily wage through proper channel and the appointment is not illegal rather irregular, is continuously discharging the duties and is indispensable for the organization, then in that case the concerned person is entitled for regularization and the judgment of the Hon'ble Supreme Court of India in the case of Uma Devi Vs. State of Karnataka, which also draws a distinction between illegal appointment and irregular appointment/ engagement, cannot be used as a shield to perpetuate precarious employment and to side steps fair engagement practice where the work is inherently perennial. In the present case, the services of the petitioner has been dispensed with long time ago and he is not discharging the duties continuously, therefore, the petitioner is not entitled for being regularized in the services of the Zila Parishad on the post



of Amin. Further as per the assertion of the learned Senior counsel for the petitioner, the petitioner is not working in the Zila parishad since long, therefore there is no relation of Master and Servant. Law in this regard is very much settled.

11. The Hon'ble Supreme Court of India in a case reported in **2015 (4) SCC 71 (Oshiar Prasad v. Sudamdih Coal Washery)** in paragraph no. 25 has held as follows:-

“25. It is a settled principle of law that absorption and regularisation in service can be claimed or/and granted only when the contract of employment an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer; then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.”

12. Similar view has been taken by the Hon'ble Supreme Court of India in case reported in a **2018(12) SCC 50 (Raj Balam Prasad and Ors. Vs. State of Bihar and Ors)** wherein in paragraph nos. 16, 21 and 23, it has been held as follows:-

“16. It is further contended that even if the order dated 10-10-2006 was not set aside, the fact remains that such order of



regularisation could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status through the writ court.

21. That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the appellants to have claimed continuity in service for want of any extension order in that behalf.

23. One of the reasons for rejection of the representation was that the services of the appellants had already come to an end in 1991 and, therefore, no orders to regularise their services could now be passed after such a long lapse of time.”

13. Accordingly, this Court finds no merit in the present writ petition and the same is dismissed.

14. Pending applications, if any, shall also stands disposed of.

(Ritesh Kumar, J)

krishnakant/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.03.2026
Transmission Date	NA

