IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1989 of 2023

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1. Anil Kumar Sharma Son of Sri Janeshwar Sharma Resident of Village- Kareya, P.O. and P.S.- Panchanpur, District- Gaya, PIN- 824236.
2. Surendra Prasad, Son of Late Ram Lakhan Prasad @ Late Ram Lakhan Sao Resident of Village- Saichak, Shivaajee Colony, Anishabad (Beur), P.S.- Beur, District- Patna- 800002.
3. Ramekwal Prasad, Son of Sri Chandeshwar Sao Resident of Village- Deoramkichak, Marchi Mirchi, P.S.- Begampur, District- Patna- 800009.
4. Vidya Sagar Prasad, Son of Late Ramchandra Prasad Resident of Village- Vishanpur, Chandrapura, P.S.- Desari, District- Vaishali.
5. Ram Bhawan Paswan, Son of Late Devnarayan Paswan Resident of Beur Jail Road, Saichak, Anishabad, P.S.- Beur, District- Patna- 800002.
6. Rajnandan Saw @ Rajnandan Sao, Son of Late Ramkishun Saw @ Ram Kishun Sao Resident of Village- Khuragechak (Neora), Anda, P.S.- Phulwarisharif, District- Patna- 801113.
7. Madan Prasad, Son of Sri Suraj Mahto Resident of Village- Maghauli, Neora, P.S.- Phulwarisharif, District- Patna- 801113.
8. Prem Paswan, Son of Late Nand Lal Paswan Resident of Village- Saichak, Beur, Anishabad, P.S.- Beur, District- Patna- 800002.
9. Chuni Lal Thakur @ Chunilal, Son of Late Parmeshwar Thakur Resident of Village- Saichak, P.S.- Beur, District- Patna- 800002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Commissioner-cum-Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
4. The Director-in-Chief, Disease Control Public Health Paramedical, Health Service, Government of Bihar, Patna.
5. The Chief Malaria Officer, Bihar, Patna.
6. The District Magistrate-cum-Collector, Patna.
7. The Civil Surgeon-cum-Chief Medical Officer, Patna.
8. The District Malaria Officer, Sultanganj, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mrs. Shweta Anand, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG-9
Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

8 25-09-2024 These nine petitioners used to work on Daily Wage basis as a Seasonal Field Workers as DDTs prayers in Malaria Eradication Department under the Department of Health and Family Welfare, Government of Bihar.

2. The case of the petitioners is that they were engaged as Seasonal Workers in the year 1985 and 1986, till 1990, they worked more than 240 days, therefore, they are entitled to be regularized/absorbed in Group-D posts in the Department of Health and Family Welfare as per State Government Resolution dated 16.03.2006, which came into force retrospectively w.e.f. 11.12.1990.

3. Thus, in the instant writ petition, the petitioners have prayed for the following reliefs:-

> (i) For issuance of appropriate writ in the nature of Certiorari for setting aside the memo No.11/M.(Court)-07/2020-740(11), Patna dated 30.08.2022 (Annexure-8) issued under signature of the Director-in-Chief, (Disease Control, Public Health, Paramedical), Health Service, Government of Bihar, Patna (Respondent No.4) whereby and whereunder, grievance of the petitioners for regularization/absorption in the regular cadre Class-IV has been rejected.

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(ii) For issuance of a writ in the nature of Mandamus directing the respondent authorities to issue orders for regularization/absorption of the petitioners in the regular cadre Class-IV as Superior Field Worker/Field Worker respectively in accordance with law keeping in view of the Seniority List in the District-Patna.

(iii) For directing the respondent authorities to follow the Seniority List (Annexure-2) strictly for regularization/ absorption of the petitioners in the regular cadre against the vacancy available.

(iv) For directing the respondent authorities which your Lordships may deem fit and proper in the facts and circumstances of the case."

4. The respondent Nos.1 to 4 have filed a counter affidavit duly sworn by the Additional Director, Health and Family Welfare Department, Government of Bihar, Patna.

5. It is contended on behalf of the respondents that the petitioners were engaged as मौसमी डी0डी0टी0 छिड़काव कार्यकर्ता on the basis of the need/requirement by the District Malaria Office, Patna. The claim of the petitioner for their regularization/ absorption against District Cadre Class-IV is not tenable in the eye of law, as they have not been engaged under regular establishment to execute regular official work rather their engagement was purely on the basis of need in a particular

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season for eradication of Malaria. It is also stated that the petitioners cannot claim parity with the decision of this Court in ***Vidya Sagar Singh Vs. The State of Bihar & Ors.*** (C.W.J.C. No.12014 of 2008, decided on 23.11.2011) because the factual aspect of the instant case is different from Vidya Sagar Singh (Supra). The respondents also state that similarly placed workers claim for regularization was considered in the case of ***Vijay Kumar Vs. State of Bihar*** (C.W.J.C. No.1534 of 2017) and the said writ petition was dismissed by this Court. The contesting respondents also contained that the process for appointment against District Cadre Class-IV posts on the basis of daily wages engagement has now been change by the Government vide Letter No.5983 dated 23.06.2020 issued by the General Administration Department, Government of Bihar and all the posts in the cadre of Group-D are required to be filled-up by examination through Bihar Staff Service Commission. Therefore, the petitioners claim cannot be considered.

6. Mrs. Shweta Anand, learned Advocate on behalf of the petitioners submits that by virtue of the resolution of the State Government dated 16.03.2006, two categories of daily wagers were classified for consideration of regularization:

(i) Daily Wagers employed for 240 days

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prior to 01.08.1985, which was extended upto 11.12.1990 and

(ii) Other category appointed after 11.12.1990 upto 2006, who would be required to complete 240 days per year for five continuous years.

7. In L.P.A. No.1690 of 2013 arising out of CWJC No.2678 of 2013 (Ashok Kumar Sharma and others Vs. The State of Bihar through the Chief Secretary and others) reported in ***2016(1) PLJR 232*** is relied upon by the learned Advocate for the petitioner to proof the said point, relevant portion of Paragraph No.6 of the said judgment is reproduced herein below:-

"Having considered the demand of the Employees Trade Union, whereby the earlier benefit of regularization of daily wagers of which the cut off date was 01.08.1985, this was extended up to 11.12.1990, which is evident now from resolution of the State Government dated 16.03.2006 (Annexure-2 to the Letters Patent Appeal). Thus, all those persons, who had been employed on daily wage but had not worked for 240 days up to 11.12.1990, were held to

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> be liable to be regularized as such, provided they had worked on sanctioned vacant posts. This was one category, which was covered by the earlier Government resolution as extended, pursuant to trade union agreement. It is then pointed out and rightly so, in our view, the other category of daily wagers, who were to be considered for regularization, were those who were appointed after 11.12.1990 may be up to 2006. It is in respect of these that new stipulation in the resolution of 2006 was laid down that they would be required to complete 240 days per year for five (5) continuous years for their regularization."

8. The learned Advocate on behalf of the petitioners has placed a list of the petitioners to show that they worked since 1985-1986 continuously upto 1990, as Seasonal Workers and during this period they worked for more than 240 days.

9. Previously, these writ petitioners filed C.W.J.C. No.5538 of 2020, decided on 30.06.2020, for their regularization/absorption in the regular cadre Class-IV as Superior Field Workers/Filed Workers respectively in accordance with law, keeping in view of the seniority list. A Coordinate Bench of this Court passed the following order :-

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"3. After filing of several pleadings, today, the issue is narrowed down to the fact that whether based on the past seasonal services rendered by the petitioners, they would be entitled to regularization or not, for which, the Respondent- State, in its counter affidavit, has taken a stand in paragraph 8, which reads as follows:-

> "8. That it is apparent from the aforesaid facts that the Director-in-Chief, Health Services, Bihar, Patna has to take needful for the redressal of the grievance of the petitioner."

4. Petitioners representation, in respect of their claim, has been submitted on 07-11-2019 (Annexure-6 to the writ petition). Therefore, the issue is to be decided by the Director-in-chief, Health services (Respondent No 4) and no adjudication is called for in the instant proceedings. The respondent No.4, therefore, should take a final decision by a reasoned and speaking order in respect of the petitioners' representation (Annexure-6) within a period of 08 weeks from the date of receipt/production of a copy of this order."

10. On the basis of the order passed in CWJC No.5538 of 2020, the Director-in-Chief, Decease Eradication, Community Health and Paramedical of Health Services, Bihar rejected the claim of the petitioner by a reasoned order dated 18.10.2019, relevant portion of the order is reproduced below:-

"उल्लेखनीय है कि बिहार साकार कार्मिक एवं

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प्रशासनिक सुधार विभाग (सामान्य प्रशासन विभाग) के संकल्प संख्या–639 दिनांक 16.03.2006 के कंडिका–2 की उपकंडिका–(1) में स्पष्ट किया गया है कि जो दैनिक वेतनभोगी दिनांक–11.12.1990 के पूर्व से कम से कम 240 दिनों से कार्यरत हैं या कार्यतर रहे हैं वे नियमितिकरण पर विचार हेतु योग्य होंगे। समूह 'ग' के पदों पर कार्यरत ऐसे दैनिक वेतनभोगियों की नियुक्ति बिहार कर्मचारी चयन आयोग के माध्यम से विशेष सीमित परीक्षा के आधार पर की जायेगी। समूह 'घ' में ऐसी नियुक्ति निम्नतम वेतनमान के पद पर समायोजन के आधार पर की जायेगी। परन्तु सभी मामलों में सिर्फ एक अवसर (One time opportunity) दिया जायगा, जिसमें सफल नहीं रहने पर या रिक्ति की अनुपलब्धता के कारण समायोजन नहीं होने पर ऐसे दैनिक वेतनभोगियों को इस संकल्प की कंडिका 5 में निहित प्रक्रियानुसार कार्यमुक्त कर दिया जायगा। एवं कंडिका–3 में समूह 'घ' के पदों पर दैनिक वेतनभोगियों की समायोजन द्वारा नियुक्ति के लिए निम्नंकित आधार एवं प्रक्रिया होगीः–(i) ''किसी विभाग/संलग्न कार्यालय/अन्य क्षेत्रीय कार्यालय की नियमित रिक्तियों के विरूद्ध ही उस विभाग/संलग्न कार्यालय/अन्य क्षेत्रीय कार्यालय के कार्यरत एवं छंटनीग्रस्त दैनिक वेतनभोगियों का समायोजन होगा और समायोजन तुरन्त के प्रभाव से होगा। किसी विभाग/संलग्न कार्यालय/अन्य क्षेत्रीय कार्यालय की रिक्तियों के विरूद्ध समायोजन नहीं किया जाएगा। किसी विभाग के कार्यरत/छंटनीग्रस्त दैनिक वेतनभोगी का उसी विभाग की रिक्ति के विरूद्ध किसी संलग्न कार्यालय के कार्यरत एवं छंटनीग्रस्त दैनिक वेतनभोगी का उसी संलग्न कार्यालय की रिक्ति के विरूद्ध और किसी क्षेत्रीय कार्यालय के कार्यरत एवं छंटनीग्रस्त दैनिक वेतनभोगी का उसी क्षेत्रीय कार्यालय की रिक्तियों के विरूद्ध समायोजन होगा। दैनिक वेतनभोगी के रूप में कम–से–कम 5 वर्षों तक लगातार (प्रत्येक वर्ष कम से कम 240 दिनों तक कार्य रहने के आधार पर योग्यता विर्धारित की जायेगी

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और इस प्रकार योग्य पाये गये दैनिक वेतनभोगियों की वरीख्ता का निर्धारण उम्र के आधार पर किया जायेगा। ऐसी वरीयता सूची कार्यालयवार होगी।''

सामान्य प्रशासन विभाग के उक्त संकल्प के आलोक में याचिकाकर्ता के मामले की समीक्षा करने पर स्पष्ट होता है कि उक्त संकल्प में मात्र उन्हीं वेतनभोगी के रूप में कार्य कर रहे थे, जबकि याचिकाकर्ता दिनांक–16.07.1992 से मौसमी डी0डी0टी0 छिड़काव कार्यकर्ता के रूप में प्रत्येक वर्ष निम्न अल्प अवधि के लिए ही दैनिक वेतनभोगी के रूप में ही कार्यकिए है। अर्थात वे दैनिक वेतनभोगी के रूप में कम–से–कम 5 वर्षों तक लगातार (प्रत्येक वर्ष कम से कम 240 दिनों तक कार्य नहीं किये है। अतः नियमितिकरण का उनका दावा वैध नहीं है, साथ ही उक्त संकल्प में नियमितिकरण पर विचार करने हेतु कट–ऑफ–डेट दिनांक 11.12.1990 के पूर्व 240 दिन कार्यरत रहने वाले पर विचार करना है। याचिकाकर्ता का मामला संकल्प में दी गई प्रावधान के अनुरूप नहीं है।

जहॉ तक समादेश याचिका संख्या–12.14/2008 विद्या सागर सिंह बनाम राज्य सरकार एवं अन्य में पारित न्यायादेश के आलोक में विषयाधीन याचिकाकर्ता श्री विजय कुमार के मामले के विचारण का प्रश्न है, इस संबंध में स्पष्ट करना है कि समादेश याचिका संख्या–12014/2008 के याचिकाकर्ता श्री विद्या सागर सिंह का मामला वर्ष 1986 से कार्य किये जाने का था। याचिकाकर्ता यद्यपि नियुक्ति/नियमितीकरण हेतु निर्धारित सभी शर्तों को पूरी नहीं करते थे, परन्तु विभाग के द्वारा माननीय उच्च न्यायालय के समक्ष ससमय सम्पूर्ण तथ्य नहीं रखे जाने/पूर्व में याचिकाकर्ता श्री विद्या सागर सिंह के द्वारा दायर एक अन्य समादेश याचिका में पारित न्यायादेश के विरूद्ध अपील दायर नहीं किय जाने की स्थिति में तकनीकी कारणें से बाध्यकारी परिस्थति में याचिकाकर्ता श्री सिंह की नियुक्ति सशर्त की गई थी, जिसे पूर्वोदाहरण नहीं माना जा सकता है। समरूप

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मामले में समादेश याचिका संख्या–1534/2017, विजय कुमार बनाम राज्य सरकार एवं अन्य में पारित न्यायादेश दिनांक 22.03.2018 के आलोक में निर्गत सकारण आदेश में भी आवेदक के दावे की अस्वीकृत किया गया है।"

11. The learned Advocate on behalf of the petitioners also relies on an unreported decision of this Court passed in CWJC No.12014/2008 (Vidya Sagar Singh Vs. The State of Bihar and others, decided on 23.11.2011). In the said report also, the petitioner-Vidya Sagar Singh used to work as Field Worker since 1986. In Vidya Sagar Singh also the respondents contended that the petitioners had not worked for more than 240 days in a year. The Coordinate Bench held that the said ground is not available to the respondents as this Court in the earlier writ petition of the petitioner in the year 2006 itself had found that the respondents themselves had prepared a penal of Seasonal Workers for their absorption in the regular cadre, in which the name of the petitioner was at Serial No.1, the penal was also available on record of the case, which was not challenged and disputed by the respondents. Moreover, it was also not claimed before this Court earlier that the petitioners had not discontinued from service or had been retrenched. Therefore, the contention raised by the respondents were not considered by the Coordinate Bench. Finally, the writ petition

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was allowed with a direction to the respondents to issue order for regularization/ absorption of the petitioners in the regular cadre as Superior Field Workers.

12. The learned Advocate on behalf of the State-Respondents vehemently urged that in view of the subsequent decisions of this Court in C.W.J.C. No.18612 of 2019, C.W.J.C. No.18070 of 2019, C.W.J.C. No.17070 of 2019, C.W.J.C. No.18148 of 2019 and C.W.J.C. No.18443 of 2019 as well as M.J.C. No.72 of 2021, arising out of C.W.J.C. No.10967 of 2018, it has been decided by the General Administrative Department, Government of Bihar that the vacant posts in Group-D cadre shall be filled-up by way of competitive examination. On the basis of the said decision, Bihar Staff Selection Commission has issued notification on 01.04.2023.

13. Since, the petitioners worked for 240 days during the period of 5 years starting from 1985-1986, their right of absorption/regularization has been crystallized by virtue of the resolution of the State Government dated 16.03.2006. When the right of the petitioners for regularization has been settled by a 2006 Resolution, the same cannot be denied by a subsequent decision of the General Administrative Department taken in the year 2022. Moreover, I have already come to the conclusion that

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the reasoned order passed on 30.08.2022 on the basis of the decision in C.W.J.C. No.5538 of 2020 completely misinterpreted and misconstrued the resolution dated 16.03.2006. Thus, the said resolution cannot stand.

14. In view of what has been stated above, this Court finds that the petitioners are entitled to be absorbed/ regularized as Superior Field Workers/Field Workers in the establishment of the Department of Health and Family Welfare, subject to the condition of their seniority in the existing vacancy of the department, within 90 days from the date of communication of this order.

15. The instant writ petition is accordingly, disposed of on contest, there shall further be no order as to cost.

(Bibek Chaudhuri, J)

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