

**Binod Kumar Jha and ors. Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Feb-27-2007

**Judge :** Barin Ghosh, J.

**Appeal No. :** CWJC No. 4916 of 2005

**Appellant :** Binod Kumar Jha and ors.

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Rajesh Kr. Singh, Adv.

**Advocate for Pet/Ap. :** D.K. Sinha, Sr. Adv., Ruby Kumari and Chakrapani, Adv.

**Judgement :**

**Barin Ghosh, J.**

1. The writ petitioners in these two writ petitions are in the panel which was finally published on 12th June, 2004 after an advertisement was published in 2001. The petitioners in these writ petitions are seeking a mandamus directing the respondents to give appointment to them.

2. In the year 1975, the State Government issued a circular to all its Officers directing them not to appoint anyone on daily wage basis without specific sanction from the Finance Department of the State. Since thereafter many persons were appointed on daily wage basis. Each of the petitioners in these writ petitions were

appointed as such daily wage workers. The petitioners were made to work on daily wage basis every day-365 days to do perennial work. Inasmuch as it was never in dispute that the petitioners were appointed as daily wage workers, it must be deemed that the petitioners were appointed after obtaining appropriate sanction of the Finance Department of the State in terms of the 1975 direction of the State Government.

3. In a few matters which came up before the Hon'ble Supreme Court, it transpired to the Hon'ble Supreme Court that people have been made to work by the State Governments to do perennial works for a long period of time. The Hon'ble Supreme Court held that this is not permissible. In those matters, the Hon'ble Supreme Court issued directions for creation of posts and giving appointment to those persons, who have been made to work as such for long years.

4. In purported compliance of those observations of the Hon'ble Supreme Court made in those judgments, in 1993 the State Government came out with a policy contained in a circular stating that whoever have been appointed prior to August, 1995 as daily wage workers and had been continuously working as such upto August, 1985 would be considered for appointment in permanent post. Since then the mockery is going on. In purported compliance of the said decision of the Government, Officers of the Government are publishing advertisements from time to time, inviting applications from those persons, who have been so appointed, so that they could be empanelled and given appointment to the vacant posts. None of these advertisements materialized in giving any appointment, far less, appointments to those, who had been working in perennial posts as daily wage workers prior to August, 1985. The last of such advertisements for the District in question was published in 2001. On the basis of such advertisement, on 12th June, 2004, a list was prepared. There is no dispute that in the list so prepared the petitioners were included. Thereupon, no appointments were given to the petitioners and hence these writ petitions.

5. In the counter affidavit, it has been stated that life of the said list, which has been construed as a panel, was only for one year and the said panel stands lapsed with effect from 11th June, 2005. It has been stated that inasmuch as no

roster clearance could be obtained during the validity of the panel and inasmuch as officers of the State were busy holding elections and looking after drought and flood they could not discharge their obligations in respect of the said panel. It is surprising that the State Government and the vigilance Department of the State Government have done nothing to take appropriate action against those Officers of the State, who by their actions as above, made that laudable policy of the Government a pure mockery.

6. The question that arises in these writ petitions is whether the list ultimately prepared on 12th June, 2004 can be said to be a panel which would lapse after one year from the date thereof, unless a contrary intention is expressed while preparing the same. I do not think that the list of the candidates, entitled to be appointed on the basis of the 1993 Policy, made on 12th June, 2004 pursuant to the advertisement published in 2001 can be said to be a panel. It is only a list of persons who have been found to be eligible to be appointed on the basis of the 1993 Policy of the State Government and cannot be termed a panel which would stand lapsed after expiry of one year. The promise as was made in the 1993 Policy is to give appointments to all these persons, who are entitled to be appointed on the basis of the criteria laid down in the said policy. Pursuant to the advertisement, the objectives of which was to locate the eligible candidates, scrutiny of the response thereto by the various applicants to verify the credentials of the applicants to ascertain whether they come within that policy of the Government, the list was prepared. There is no question of that list lapsing after expiry of one year from the date of preparation thereof.

7. Therefore, it is declared that the said list has not lapsed and is still continuing. The respondents and, in particular, the Divisional Commissioner, Bhagalpur is directed to provide to the appointing authority roster clearance within fifteen days from today, if not already provided, and the appointing authority is directed to fill up the vacant posts on the basis of such roster clearance from the list in chronological order within a period of 30 days therefrom.

8. It is made clear that after the vacancies are supplied, the list will not die its natural death. The same will continue until those, who have been listed in the

panel, are provided with an appointment in terms of the policy of the Government taken in 1993, provided, of course, they are otherwise eligible to be appointed, i.e., they have not reached the age of superannuation.

9. With the above directions, these writ petitions are disposed of.

10. Let a copy of this order be supplied to the learned Counsel for the State.

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