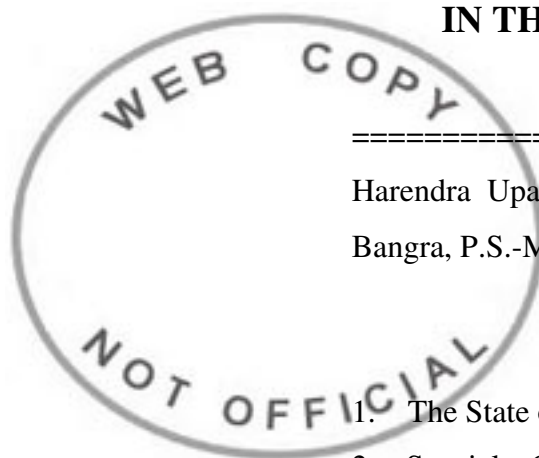




IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8993 of 1998

Harendra Upadhy, S/o Sri Krishna Kr. Upadhy, resident of Village-Sihautha Bangra, P.S.-Maharaj Ganj, District-Siwan.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharaj Ganj-Cum-Block Development Officer, Maharajganj.
- 3. Sub-Divisional Officer, Maharaj Ganj-Cum-Chairman, Notified Area Committee, Maharaj Ganj, Distt.-Siwan.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 8872 of 1998

Praveen Kumar Singh, Son of Shri Ramanand Singh, resident of Village-Sihaunta Bangra, P.O.-Bangara, P.S.-Maharajganj, District-Siwan.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharajganj-cum-Block Development Officer, Maharaj Ganj.
- 3. Sub-Divisional Officer, Maharaj Ganj-Cum-Chairman, Notified Area Committee, Maharaj Ganj, Distt.-Siwan.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 8992 of 1998

Kashi Nath Yadav, Son of Shri Kuber Yadav, resident of Village-Indauli, P.S.-Maharajganj, District-Siwan.



.... **Petitioner/s**

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharajganj-Cum-Block Development Officer, Maharajganj.
- 3. Sub-Divisional Officer, Maharaj Ganj-Cum-Chairman, Notified Area Committee, Maharaj Ganj, Distt.-Siwan.

.... **Respondent/s**

With

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Civil Writ Jurisdiction Case No. 9020 of 1998

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Ganesh Prasad Yadav, Son of late Satyanarain Yadav, resident of Village-Indauli, P.S.-Mahraj Ganj, District-Siwan.

.... **Petitioner/s**

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharaj Ganj-Cum-Block Development Officer, Maharaj Ganj, District-Siwan.
- 3. Sub-Divisional Officer, Maharaj Ganj-Cum-Chairman, Notified Area Committee, Maharaj Ganj, District.-Siwan.

.... **Respondent/s**

With

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Civil Writ Jurisdiction Case No. 8745 of 1998

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Hareshwar Singh, Son of Ram Pravesh Singh, resident of Village-Rukundi, Tola-Bharos Kuer, P.S.-Dauranda, District-Siwan.

.... **Petitioner/s**

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharaj Ganj-Cum-Block Development Officer, Maharajganj.

3. Sub-Divisional Officer, Maharajganj-Cum-Chairman, Notified Area Committee, Maharajganj, District-Siwan.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 8778 of 1998

Pramod Kumar Singh, Son of Shri Banke Singh, resident of Village-Bangara, P.O.-Bangara, P.S.-Maharajganj, District-Siwan.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharajganj-Cum-Block Development Officer, Maharajganj.
- 3. Sub-Divisional Officer, Maharajganj-Cum-Chairman, Notified Area Committee, Maharajganj, District.-Siwan.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 9021 of 1998

- 1. (a) Mosmat Dewanti Devi, Wife of late Chandrika Chaudhary.
 - (b) Chandan Kumar Chaudhary, Son of late Chandrika Chaudhary.
- Both resident of Village-Dibbi, P.S.-Dauranda, District-Siwan.

.... Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Special Officer, Notified Area Committee, Maharaj Ganj-Cum-Block Development Officer, Maharaj Ganj, District-Siwan.
- 3. Sub-Divisional Officer, Maharajganj-Cum-Chairman, Notified Area Committee, Maharajganj, District-Siwan.

.... Respondent/s

Appearance (In all the cases aforementioned) :

For the Petitioners : Mr. K.N. Choubey, Sr. Advocate
Mr. Shailendra Kumar Singh, Advocate

For the Respondents : Mr. Krishna Kumar, Advocate (AC to GP-26)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 25-02-2015

As the issues involved in all these writ applications are substantially same and the facts are almost similar, they have been heard together, with the consent of the parties and are being disposed of by the present common judgment.

2. In all the writ applications, relief, seeking direction to the respondents to make payment to the petitioners, the entire arrears of salary which, according to them, are due since October, 1984 and further a direction to the respondents to convert their temporary service by giving them permanent status of employees of Notified Area Committee, Maharajganj, Siwan, have been made.

3. It has been informed at the very outset, with reference to the petitioner (Harendra Upadhya) of C.W.J.C. No. 8993 of 1998, that during the pendency of the writ application, he attained the age of superannuation on



13.06.2008 and, therefore, the relief seeking grant of permanent status of employment has become infructuous now, but at the same time, it has been argued that he would be entitled for the arrears of salary for the period during which he actually worked. The petitioner (Chandrika Choudhary) of C.W.J.C. No. 9021 of 1998, died during the pendency of the writ application and, accordingly, came to be substituted by his legal heirs, i.e., his wife and son. It is, in this circumstance, contended on behalf of the substituted petitioners (Mosmat Dewanti Devi and Chandan Kumar Chaudhary) of C.W.J.C. No. 9021 of 1998 that they are entitled for arrears of salary which was payable to the original petitioner, for the period during which he had worked under the Notified Area Committee, Maharajganj.

4. The petitioners of C.W.J.C. No. 8745 of 1998 (Hareshwar Singh), C.W.J.C. No. 8993 of 1998 (Harendra Upadhyaya), C.W.J.C. No. 9021 of 1998 (Chandrika Chaudhary, since deceased and substituted by heirs/legal representative) and C.W.J.C. No. 9020 of 1998 (Ganesh Prasad Yadav) were, as per pleadings in the respective writ applications, appointed as Tax-Collectors in the scale of Rs.



80 to 100 under the orders of Sub-Divisional Officer, Siwan-cum-Chairman, Notified Area Committee, Maharajganj (Annexure-1). It appears from the said office order, appointing the petitioners, that they were temporarily appointed to expedite recovery of Municipal taxes. It was specifically mentioned in the said order that the appointments were temporary and they would be treated to be permanent in the employment only after obtaining due sanction from the State Government. The petitioner of C.W.J.C. No. 8992 of 1998 (Kashi Nath Yadav) was appointed on similar terms, as Night Guard, in the scale of Rs. 55 ½ to 75 (Annexure-2). From the perusal of Annexure-2, it would appear that alongwith the petitioner of C.W.J.C. No. 8992 of 1998, one Rajdhari Prasad was also appointed as Clerk in the said Notified Area Committee, in the scale of Rs. 100 to 120. The petitioner of C.W.J.C. No. 8778 of 1998 (Pramod Kumar Singh) is said to have been appointed, as Tehsil Peon, by an order dated 05.06.1982 in the scale of Rs. 55 ½ to 75, whereas, the petitioner of C.W.J.C. No. 8872 of 1998 (Praveen Kumar Singh) was appointed, as Clerk, vide an order dated 13.06.1983



(Annexure-1). The said letter dated 13.06.1983, annexed as Annexure-1 to C.W.J.C. No. 8872 of 1998, does not indicate the amount which was payable to the petitioner in terms of the said appointment. It has been submitted on behalf of the petitioner of C.W.J.C. No. 8872 of 1998 that the petitioner was paid daily-wage @ Rs. 10/- per day.

5. It is the common case of all the petitioners that they were paid salary till September 1984 and, thereafter, despite the fact that they continued to work under the Notified Area Committee, they have not been paid their salaries. It is further, the common case of all the petitioners that though their services were never terminated by issuance of any specific order, the respondents did not allow the petitioners to put their signatures on the attendance register, with effect from 01.01.1999, on the verbal orders of the Executive Officer of the Notified Area Committee. It is also the common case of all the petitioners that their appointments, made against various posts, were subsequently approved by the Notified Area Committee, in its meeting dated 06.09.1989, vide Resolution No. 6 (3).

6. Separate counter affidavits have been filed on



behalf of the respondents in all the cases, stating that the petitioners were never appointed legally by the Notified Area Committee and they are not working under the said Notified Area Committee. It has been stated that the Statutory Rules have been framed by the State Government, known as *“Rules for Regulating the Appointments and Qualification for the Officers and Servants of the Municipalities and Notified Area Committee”*. Rule – 2 of the said Rules, requires that recruitment to the post under the Notified Area Committee shall be made after publication of vacancies in at least two consecutive editions of two local newspapers, having largest circulation in the area and, as per Rule, the selection on the posts is to be made by the Notified Area Committee, consisting of the Chairman, Executive Officer, a Municipal Commissioner, Sub-Divisional Officer and a Local Officer of Technical Department, in case of appointment on technical posts. The Rules further contemplate, as per respondents, that no post shall be created without approval of the State Government.

7. It has been stated in the counter affidavits that vide Letter No. 6482 dated 14.12.1979, total 9 posts in Notified



Area Committee, Maharajganj, were sanctioned and at the relevant point of time, 9 employees were already working against various posts under the Notified Area Committee. The then Sub-Divisional Officer-cum-Chairman of Notified Area Committee, made the appointments on temporary posts, in anticipation of approval/sanction of posts by the State Government. However, in absence of any direction from the State Government, no payment was made to them from October, 1984. It has also been stated in the counter affidavits that the Notified Area Committee had not taken work from the petitioners after 16.02.1991 and they have denied the assertion made in the writ application that the petitioners had been working continuously. The petitioners, in their rejoinder have disputed this stand of the respondent-Notified Area Committee and in their rejoinder they have stated that on 26.06.1997, the Special Officer of the Notified Area Committee-cum-Block Development Officer, Maharajganj, had written to the Urban Development Department, Government of Bihar, raising demand for payment of salary to the petitioners for the period 1997 – 1998. It has further been stated in the rejoinder that there



are several other materials, documentary in nature, to establish that they have been working under the Notified Area Committee and they have not been allowed to put their signatures, only with effect from 01.01.1999, after institution of present writ application.

8. Mr. Kamal Nayan Choubey, learned senior counsel, appearing on behalf of the petitioners, refuting the contention of the respondents that there were only 9 posts sanctioned in the office of Notified Area Committee, has contended, referring to the rejoinder filed on behalf of the petitioners to the counter affidavits, that there were, at the relevant point of time, 20 posts sanctioned and the petitioners were appointed within those 20 sanctioned posts. He has referred to Annexure – 5 to the said rejoinder, dated 06.05.1997 in support of the said submission. He has submitted that the appointments of the petitioners were duly approved and confirmed by the entire executive body of the Notified Area Committee, Maharajganj, in its meeting dated 06.08.1989 and has contended that in any view of the matter, the respondents cannot withhold payment of salary to the petitioners, for the period during which, in fact, they

discharged their duties.

9. It would appear from the pleadings that one Rajdhari Prasad, who was appointed alongwith the petitioner of C.W.J.C. No. 8992 of 1998, had approached this Court by filing C.W.J.C. No. 1440 of 1992, seeking direction for payment of salary. A Division Bench of this Court vide order dated 14.09.1994, dismissed the said writ application in the following terms:-

“Heard the learned counsel for the parties.

The present application has been filed by the petitioner for a direction to the Sub-divisional Officer, Maharajganj Notified Area Committee, Siwan (Respondent No.4) to pay the salary of the petitioner.

According to the petitioner he was appointed as clerk by the S.D.O. cum Chairman of Maharajganj Notified Area Committee in the year 1978 and in pursuance of which he joined on 16.01.1979 and, thereafter, he worked for some time and again he was appointed to the post of clerk on 20.8.1981 and he continued till 30th September, 1984. It is also



stated that the petitioner has been paid some amount but after 1.10.84 no amount has been paid to him. This court on 30.9.92 directed the Sub-divisional Officer (Respondent No.4) to file an affidavit as to whether he has power to appoint the petitioner and others as employees of the Notified Area Committee. He was also directed to state as to the procedure to be followed for making appointment of clerks.

A counter affidavit has been filed from which it appears that the Government has framed a rule known as "Rules for Regulating the appointments and qualifications for the officers and servants of Municipalities and N.A.C." in the year 1977. According to the provisions of the Rule, appointments to the posts of Assistants shall be made by a duly constituted committee after publication of the vacancy in the at least the local newspapers having wide circulation and pasting notices in local public offices. According to the said rule no post shall be created without approval of the State Government. Petitioner was not appointed on the

*sanctioned post according to law.
This apart, no has filed the present
writ application after a long delay.*

*For the aforesaid reasons, we
are not inclined to allow the prayer
of the petitioner. Accordingly, the
writ application is dismissed.”*

The said order has been brought on record, as Annexure – A to the counter affidavit filed on behalf of the respondents.

10. In reply, the petitioners have brought on record by way of Annexure - 7 to rejoinder affidavit stating that on Special Leave Petitions preferred before the Supreme Court, by the said Rajdhari Prasad, being S.L.P. (Civil) No. 22670 of 1994, the Supreme Court directed the respondents by order dated 04.10.1996, to make payment of arrears of salary to him for the period during which the said Rajdhari Prasad had worked, in the Notified Area Committee and has contended that payment of salary of these petitioners cannot be withheld.

11. Mr. Choubey, has submitted, in support of the relief for grant of permanent status, as employees of the Notified Area Committee, that with the lapse of time, since



the petitioners were allowed to work continuously without interruption for nearly 17 years, they developed legitimate expectation that they would be given permanent status. He has also submitted that the petitioners, at this point of time after having served under the Committee for several years, cannot be considered for employment anywhere else, as they are now over-aged for entry into any other service. He has placed reliance upon Supreme Court decision in case of *“H. C. Puttaswamy and others v. The Hon’ble Chief Justice of Karnataka High Court”* (AIR 1991 Supreme Court 295) to submit that on humanitarian grounds, the petitioners should be treated to have been regularly appointed. He has also relied upon another Supreme Court decision in case of *“Union of India and others v. Kishorilal Bablani”* (AIR 1999 Supreme Court 517) and has contended that after having served the Notified Area Committee for more than 10 years, their services ought not to have discontinued.

12. There are certain facts which are not in dispute. There was absolutely no procedure followed, while engaging the services of these petitioners of any sort, in conformity with the provisions of Articles 14 and 16 of the



Constitution of India. This is also not in dispute that the petitioners were paid their salaries up-to September, 1984 only. These writ applications, seeking direction for payment of salary for the entire period came to be filed on 15.10.1998. There is absolutely no explanation for this inordinate delay of 14 years in approaching this Court in writ jurisdiction, seeking direction for payment of salary for the period during which they allegedly worked, but were not paid salary. The said Rajdhari Prasad had approached this Court in the year 1992. In my opinion; the unexplained delay has made the case of the petitioners difficult, for direction to be issued by this court for payment of salary. This is settled that the High Court, under Article 226 of the Constitution of India, should not entertain belated claims unless tangible explanation is tendered. Reference may be made in this regard to the Supreme Court decisions in case of *“C. Jacob vs. Director of Geology and Mining and another”* reported in *“(2008) 10 Supreme Court Cases 115”* and *“Delhi Administration and others vs. Kaushilya Thakur and another”* reported in *“(2012) 5 Supreme Court Cases 412”*. Similar view has been taken by the Supreme Court in case of *“Union of*



India and others vs. Tarsem Singh” reported in “(2008) 8 Supreme court Cases 648” and in case of “*Chennai Metropolitan Water Supply and Sewerage Board and others*” reported in “(2014) 4 Supreme Court Cases 108”. Reference may also be made to a recent Division Bench decision of this Court dated 19.01.2015, passed in *L.P.A. No. 1577 of 2014 (Suraj Deo Lal vs. The State of Bihar)*, where this Court has held as follows:-

“5. Dealing with the question as to whether a time barred debt can be recovered by taking resort to Article 226 of the Constitution of India, the Constitution Bench, in *State of Madhya Pradesh and Another v. Bhailal Bhai*, reported in (1964) 6 SCR 261, observed that the remedy, which Article 226 of the Constitution of India provides, is not aimed at superseding completely the modes of obtaining relief by an action in a civil court or to deny the defence legitimately open in such actions. Pointed out the Constitution Bench in *Bhailal Bhai* (supra) that the power to give relief under Article 226 of the Constitution of India is a discretionary power and this is, particularly, true in the case of issue of a writ of mandamus and while deciding as to whether the court shall exercise its discretion to issue the writ, one of the factors, which the court must take into account, is the delay made



by the aggrieved party in seeking the remedy under Article 226 of the Constitution of India and what explanation, if any, has been offered for such a delay. Further points out, the Constitution Bench, in **Bhailal Bhai** (supra), that the maximum period fixed by the legislature as the period of limitation for obtaining relief from the civil court is a matter of State's policy and may be, ordinarily, taken to be reasonable standard by which the delay in seeking the remedy under Article 226 of the Constitution of India can be measured. In fact, the court may consider, in the light of **Bhailal Bhai** (supra), the delay as unreasonable even if the delay is for a period less than the period of limitation prescribed for a civil action; but where the delay is of a period, which is more than the prescribed period of limitation, it would almost always be proper for the court to hold that such delay is unreasonable. The Constitution Bench, in **Bhailal Bhai** (supra), concluded thus:

“It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this



period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, the mistake was discovered much later, this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of the opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

13. I am, therefore, of the view that in exercise of power under Article 226 of the Constitution of India, in the present facts and circumstances of the case, no relief for payment of salary can be granted to the petitioners, who approached this Court for such relief, fourteen years after the respondents allegedly stopped making payment of salary.

14. Answer to the submission made by Mr. Choubey, learned senior counsel, that the petitioners developed legitimate expectation that they would acquire status of permanent employee of Notified Area Committee, lies in

Supreme Court decision in case of *“Union of India & Anr. vs. Arulmozhi Iniarasu & Ors.”* reported in *“2011 (4) PLJR (SC) 83”*, *Paragraph – 20* of which, reads as follows:-

“20. It is plain from the terms of the letter of appointment that the respondents were told in unambiguous terms that their appointments were temporary and would not confer any right to claim any permanent post in the department. It is not the case of the respondents that at any point of time, during their engagements with the appellants, a promise was held out to them by the appellants that they would be absorbed as regular employees of the department. In fact, no such promise could be held out in view of the Government O.M. dated 7th June, 1988 banning the employment of persons in regular posts.”

15. The Supreme Court in case of *Union of India & Anr. vs. Arulmozhi Iniarasu & Ors. (Supra)* further held in *Paragraphs – 22 and 23* of the judgment as follows:-

“22. Having bestowed our anxious consideration to the facts of the case, in our opinion, the

doctrine of legitimate expectation, as explained above, is not attracted in the instant case. The argument is rejected accordingly.”

*“23. Lastly, as regards the submission that the action of the appellants is highly discriminatory inasmuch as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected. It is well settled that a writ of mandamus can be issued by the High court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. (Ref.: **Sushanta Tagore & Ors. vs. Union of India & Ors.; U.P. State Sugar Corpn. Ltd. & Anr. vs. Sant Raj Singh & Ors.; State, CBI vs. Sashi Balasubramanian & Anr. and State of Orissa & Ors. vs. Prasana Kumar Sahoo**).”*

16. I do not find that the petitioners have been able to make out any case that there exists any legal right in them

and corresponding legal obligation in the respondents for the purposes of grant of any relief in their favour, as sought for in the present batch of writ applications.

17. The Supreme Court, in case of *“State of Orissa and Anr. vs. Mamata Mohanty”* report in *“(2011) 3 Supreme Court Cases 436”* in most categorical terms has held that a person employed in violation of Article 14 and 16 of the Constitution of India is not entitled to any relief including salary. Paragraph – 36 of the said decision is relevant and is reproduced below:-

“36. Therefore, it is a settled legal preposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being



considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

17. I am of the view that apparently the appointments of these petitioners were backdoor appointments, without following any procedure and, therefore, petitioners are not entitled for any relief to be granted by this court in the present proceeding under Article 226 of the Constitution of India.

18. These applications being devoid of merit and are being dismissed.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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