

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6453 of 2014

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Deepak Roy Son Of Sri Dilip Kumar Roy Resident Of Mohalla Khajanchi
Hat, P.S. Khazanchi Hat, District Purnea

.... Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary Urban Development
Department, Government Of Bihar, Patna
2. The District Magistrate, Purnea
3. The Nagar Niram Purnea Through Its Chairman/Mayor Purnea
4. The Executive Officer, Nagar Nigam, Purnea, District Purnea

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha

For the Respondent/s : Mr. Sc9- Raj Nandan Prasad

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 05-02-2015

Heard learned counsel for the parties.

Having regard to the fact that the petitioner has made prayer for regularization of service and that the appointment of the petitioner was made only as daily wages and that too without undergoing any advertisement and selection, this Court will have no difficulty in holding that his case is squarely covered by the Full Bench Judgment of this Court in the case of Ram Sevak Yadav v. the State of Bihar, reported in 2013(1) PLJR 964, wherein it has been held as follows:

“We therefore sum up our conclusions and answer the reference as follows:-

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any

circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any Court orders.

The petitioners were appointed in temporary capacity by a process contrary to Article-14 of the Constitution without competitive selection as an individual favour doled out to them. There is no material to hold that they were appointed against vacant sanctioned post and possessed qualifications for the same. They were terminated before (Uma Devi) (supra) and have sought to retain their status by virtue of Court proceedings and are therefore not entitled to the benefits of paragraph 53. The issue of any procedural irregularity for a finding of forged appointment is therefore irrelevant."

At this stage learned counsel for the petitioner submits that similarly situated persons have been regularized in service. First of all once this Court has found that there is a Full Bench judgment against the petitioner which debars him from the relief of regularization, there can be now no direction issued by this Court contrary to law laid down by this Court in the case of Ram Sevak Yadav (supra). Secondly, even if it is accepted that the prior to the judgment some regularization was made that cannot be

made the basis for issuing any direction. Finally, if an illegality is committed in a case that has not to be perpetuated as was held in the case of State of Bihar v. Upendra Nr. Singh & ors., reported in (2009)5 SCC 65.

The rest of submission of Mr. Bhola Prasad that a Letter Patent Appeal in the similar matter is pending before this Court and this case should await disposal of the aforesaid L.P.A. has to be also noted for its being rejected. The aforesaid pending L.P.A. has nothing to do with the result of this case because that Appeal is with regard to a person who had already been regularized in service and his such regularization has been cancelled which now is become subject matter of the dispute pending before the appellate court. In the present case the petitioner has not at all been regularized and therefore, there is no question of waiting for the judgment of the Division Bench.

That being so, this application for the reasons indicated above must be and is hereby dismissed.

(Mihir Kumar Jha, J)

surendra/-

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