

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4371 of 2015**

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Md. Ali S/o Late Md. Salim resident of Mohalla - Digha, I.T.I. Railway in  
Sah Toli, P.S. - Digha, District - Patna - 800011.

.... .... Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Culture Government of India, New Delhi.
2. Khuda Baksh Oriental Public Library through its Chairman, the Governor of Bihar, Raj Bhawan, Patna.
3. The Divisional Commissioner, Patna in charge of the Director, Khuda Baksh Library Officer, situated in Patna.
4. Sri Javed Ashraf , posted as D.D.O. in the Khdua Baksh Library, Ashok Raj Path, Patna - 800004.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Subodh Kumar Sinha, Advocate.

For the Respondent/s : Mrs. Kanak Verma, C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

4      13-04-2015      The prayer of the petitioner in this writ application  
reads as follows:

*"... to consider the Regular status of the petitioner in the  
Khuda Baksh Oriental Public Library to the post of Press  
Operator Offset Printing and pay the emoluments attached  
with the post from the date he is entitled to the post because of  
the abnormal delay committee by the Respondents in  
consideration of his case."*

2. Mr. Subodh Kumar Sinha, learned counsel for the  
petitioner, in support of the aforementioned prayer, has basically  
concentrated on the aspect that when the petitioner was engaged in  
Khuda Baksh Oriental Public Library, Patna (hereinafter referred  
to as 'the Library') on contract basis on the post of Press Operator



for an initial period of six months to operate the Prakash Offset Machine and eventually, was allowed to continue for more than 16 years, he should not now be thrown out of his contractual appointment only because he has filed the present writ application claiming his regular status in the Library. In this regard, he has also submitted that if the director of the Library could not inform the petitioner that there was no requirement for him, but having taken work from the petitioner for a period over 15 years, he can not be now thrown out and, in fact, following the circular of the Government of India, he needs to be regularized in service. In this regard, he has also referred to a recent report of Three Man Committee dated 28.01.2015 constituted by the Commissioner, Patna Division in capacity of Incharge Director of the Library, wherein a recommendation was made that the services of the petitioner should be continued since there is acute shortage of manpower in the Library.

3. Per contra, Mrs. Kanak Verma, learned counsel appearing on behalf of the respondents, having filed counter affidavit, has sought to explain that the petitioner's appointment on contract basis was made against unsanctioned post and, therefore, there should be no question of regularizing his services. She has also submitted that at present there is no regular Director and the



Commissioner of Patna Division has been given the additional charge of the post of Director and, therefore, it cannot be made out from the Three Man Committee report allegedly constituted under the orders of the Commissioner of Patna Division. Mrs. Verma has also orally submitted that at present the Press is not functioning and there would be also difficult for the Library to retain the petitioner on contract basis.

4. Having regard to the aforementioned submissions and the materials on record, the first and foremost question, emerging for consideration before this Court, would be as to what was/is the status of the petitioner on the basis of which he could have enforced his claim of regularisation. Admittedly, in presence of the categorical averments in para-7 of the counter affidavit that there is no sanctioned post of Press Operator reading as follows:

*"7. That since there is no sanctioned post for press operator, he could not be granted regular status. The casual workers who were granted temporary status were those who were senior to the petitioner."*

and its vague denial of the petitioner in para- 5 of the reply, reading as follows:

*"5. That the statement made in paragraph no. 7 again is false and misleading and denied as such. If there is no sanctioned post of Press Operator then why the petitioner was engaged on that post of Press Operator for 17 years. In this regard it is relevant to state here that Shri Habibul Rehman Chigani remained as Director of the Library till*

*31.12.2001 and it was during his regime that correspondence was made with regard to the sanctioned Post of Press Operator.",*

nothing is left for speculation for at least this Court that there was no sanctioned post of Press Operator.

5. It is true that the petitioner was allowed to work in the Press while there was not a sanctioned post and the petitioner could not have been regularized only on the basis of length of his service. This part of law has already been settled by the Apex Court in the case of ***Ashwani Kumar & Ors vs. the State of Bihar & Ors.*** reported in ***(1997) 2 SCC 1***, wherein it was held as follows:

"So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances there was

no occasion to regularise them or to given them valid confirmation. The so-called exercise of confirming these employees, therefore, remained a nullity.

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The whole exercise remained in the realm of an unauthorised adventure. Nothing could come out of nothing. Ex nihilo nihil fit. Zero multiplied by zero remains zero. Consequently no sustenance can be drawn by the appellants from these confirmation orders issued to them by Dr. Mallick on the basis of the directions issued by the authorities concerned at the relevant time. it would amount to regularisation of back-door entries which were vitiated from the very inception. It is not possible to agree with the contention of the learned counsel for appellants that the vacancies on the Scheme had nothing to do with regular posts. Whether they are posts or vacancies they must be backed up by budgetary provisions so as to be included within the permissible infrastructure of the Scheme. Any posting which is dehors the budgetary grant and on a non-existing vacancy would be outside the sanctioned scheme and would remain totally unauthorized. No right would accrue to the incumbent of such an imaginary or shadow vacancy."

6. The prayer of the petitioner, therefore, for regularizing his services, in absence of sanctioned post, has to fail

especially when the Full Bench of this Court, in the case of **Ram Sevak Yadav Vs The State of Bihar** reported in **2013(1) PLJR 964**, has laid down the law in this respect in these words:

*"43. We therefore sum up our conclusions and answer the reference as follows:-*

*(A) Secretary State of Karnataka vs Uma Devi, reported in 2006(2)PLJR (SC) 363, 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.*

*44.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."*

7. There is, however, still an issue in the matter, which would still require consideration that even if the petitioner's services cannot be regularized, whether his contractual appointment on the basis of which he has continued for a period of 16 years, despite such contract being initially for a period of six months, can still be retained. Here the issue relating to functioning



of the Press and requirement of the work for the petitioner will be of prime consideration. This Court is not aware as to whether the Press (Prakash Offset Machine), for which the petitioner's services were taken on contract basis in the year 1998, is still functioning or whether the Library has a Press which still is functional inasmuch as this issue has never been apprised to this Court by either of the parties in their pleadings.

8. As noted above, there is no regular Director of the Library after the term of the earlier Director has expired. The Commissioner of Patna Division is only working as an Incharge of the Library till the appointment of a next regular Director who is being liable for recommendation of the cadre creation/sanction of post or is being a cadre policy decision and, in fact, when earlier Director's request for sanctioning of a post of Press Operator, as explained in para 5 of the reply to the counter affidavit, having gained no fruitful result, this Court would find it difficult to direct the respondents to first create a post of Press Operator and then allow the petitioner to continue in service.

9. None-the-less, if the petitioner had been allowed to continue in service for more than 16 years and shown door after filing of this writ application, the matter should be placed before the competent authority of the Library i.e. the Executive



Committee of the Khuda Baksh Oriental Public Library and if it is found that the Press, in which the services of the petitioner were utilized on contract basis, is still functional and its continuity would be in the interest of the Library, a fresh request be made by the Executive Committee through the proper channel to the Government of India for sanctioning and creating of the post of Press Operator. If such a request is received, the Government of India shall after applying its own objective/standard, take a conscious decision as to whether a post of Press Operator is required to be sanctioned for Library. In the event, if such a post is created that would be drawn for appointment by following the mandate of Articles 14 and 16 of the Constitution of India in which the case of the petitioner will also be considered and may be on account of his experience, who may be far better than the fresh candidates but then he will have no other additional weightage, save and except, relaxation of his age for the period he has worked on contract basis.

10. Before parting with, this Court, however, having found from the Three Man Committee report that a larger number of employees have been engaged on daily wage/ contract basis in the Library, would direct the Executive Committee to take a conscious decision as with regard to retaining them as well in



accordance with law and if necessary, to advertise all those posts and make appointment only after following the mandate of Articles 14 and 16 of the Constitution of India so that a similar situation, alike the petitioner, does not crop up in future by retaining the persons appointed through backdoor even without following the mandate of Articles 14 and 16, creating hopes for their regularisation, ultimately showing the door such a practice can never be continued in a welfare State much less approved by this Court. All such appointment therefore, which are being conducted on daily wage/contract basis must be brought to an end as soon as possible by advertising those posts, only if they are sanctioned, and fill them up by strictly following the mandate of Article 14 and 16 of the Constitution of India.

11. With the aforementioned observation and direction this writ application is disposed of.

12. Let a copy of this order be given to the Divisional Commissioner, Patna-cum- Incharge Director of the Khuda Baksh Oriental Public Library for its implementation in letters and spirit.

**(Mihir Kumar Jha, J)**

Sujit/-

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