

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.38 of 2004

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1. Amol Narayan Jha son of Sri Udit Narayan Jha, village- Berma, P.S.- Jhanjharpur (R.S.), District- Madhubani.
 2. Palat Jha, son of Late Jeeb Nath Jha, resident of village- Jhanjharpur Bazar (Jaicy Tola), P.S. Jhanjharpur Bazar, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Water Resources (Irrigation) Department, Government of Bihar, Patna.
3. Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mohan Kumar Singh
Mr. Dudheshwar Singh

For the Respondent/s : Mr. R.K. Kumar Pandey, SC-29

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

C.A.V. JUDGMENT

Date: 7 -07-2015

The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the office order contained in Memo No.2043 Patna, dated 21.12.2002 (Annexure-16) and the office order contained in Memo No.96 Patna, dated 06.01.2003 (Annexure-16/A), both passed by the respondent No.3, whereby services of the petitioners on the post of Mapak (Amin) have been terminated with immediate effect on the ground that their initial appointment on the said post was illegal/irregular, and was made de hors the constitutional scheme and by an officer who was not authorized to make such appointment. The petitioners have further prayed for issuance of a direction to the respondents for regularization of their services in the prescribed pay scale with all consequential benefits.

2. Shorn of unnecessary details, the petitioners were appointed



by office order dated 24.10.1987 (Annexure-3) issued by the Special Land Acquisition Officer, Medium Irrigation Scheme, Dumka (now in the State of Jharkhand) on the post of Mapak/ Amin on provisional/ ad-hoc basis. As per the case of the petitioners they joined the aforesaid post of Mapak/ Amin on 02.11.1987 and continued in service. Subsequently, services of some similarly situated employees including that of the petitioners were extended on 13.05.1988 by the respondent- Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna. It is also the case of the petitioners that even thereafter their services were extended and they remained in service of the State on the post of Mapak/ Amin. However, on the basis of certain preliminary enquiry conducted by the State authorities and the materials/ information being collected that large number of illegal/ irregular appointments have been made by certain officers, without there being powers vested in them and without following the procedures prescribed under the law, a show cause notice was issued to the large number of employees including the petitioners in the Daily Hindi News paper "Aaj" in its Edition dated 29.09.1998 asking them to file their show cause as to why their services be not terminated as their initial entry in the service was illegal/ irregular. The petitioners filed their show cause (Annexure-9) producing their documents that they were in continuous service of the State for long time after their appointment made in the year 1987. Thereafter on the basis of enquiry, and examination of documents as also relevant records, it was found that initial appointment of the petitioners was made only on provisional basis on the post of Mapak/ Amin by an officer, who was not authorised to make such appointment, and it was made without following the recruitment procedures prescribed under law.



3. It is not in dispute that 2nd / fresh show cause notice was issued to the petitioner-Amol Narayan Jha vide letter dated 05.01.2002 (Annexure-10) and the petitioner- Palat Jha vide letter dated 07.01.2002 (Annexure-10 series) by the respondent no.3 asking them to show cause as to why their services be not terminated on the grounds indicated in that show cause notice. The petitioners, in response to the aforesaid notice, submitted their show cause on 22.01.2002, whereafter by the impugned office order dated 21.12.2002 (Annexure-16), and the impugned office order dated 06.01.2003 (Annexure-16/A) services of the petitioner No.2 Palat Jha and that of petitioner no.1 Amol Narayan Jha, respectively have been terminated with immediate effect for the reasons recorded in those orders particularly on the ground that their appointment were made by an Officer who was not authorized to make such appointment and it was made without following the procedures prescribed under the law for such appointment.

4. Learned counsel appearing on behalf of the petitioners submits that though initial appointment of the petitioners was made temporarily on provisional basis vide order dated 24.10.1987 (Annexure-3), but their services were extended from time to time and they remained in continuous service till the impugned orders were passed on 21.12.2002 (Annexure-16) and 06.01.2003 (Annexure-16/A) terminating their services from the post of Mapak/ Amin. It is contended that in view of the judgement of Hon'ble Apex Court in the case of **State of Karnataka vs. M.L. Kesari** [(2010) 9 SCC 247], impugned orders of termination of services of the petitioners are not sustainable in law and are fit to be set aside by this Court with all consequential benefits and/or the services of the petitioners are fit to be regularized.



5. The matter has been contested by the respondents by filing a counter-affidavit on their behalf. Learned State counsel, by referring to the averments made in the aforesaid counter-affidavit, submits that very entry of the petitioners in service by order dated 24.10.1987 (Annexure-3) was illegal and void, as the Special Land Acquisition Officer, Medium Irrigation Scheme, Dumka was not empowered to make such appointment. It is contended that originally all the Special Land Acquisition Officers were empowered to make such appointment by Government letter dated 18.02.1978, but it was subsequently withdrawn by Government letter dated 02.12.1983 itself, yet the appointment of the petitioners on the post of Mapak/ Amin was made by order 24.10.1987 (Annexure-3), when the Special Land Acquisition Officer was not authorized to make such appointment. According to him, since the initial appointment of the petitioners itself was illegal, therefore, any subsequent extension of their services would not legalize the same. It is further pointed out that neither any advertisement was issued for making such appointment nor the rules of reservation was followed. Hence, the appointment of the petitioners was in the teeth of Articles 14 and 16 of the Constitution of India. It is also pointed out that since large number of illegal appointments were made by certain officers of the department, therefore, the Vigilance Department of the Government lodged an F.I.R. against those officers giving rise to Vigilance P.S. Case No. 4 of 1997 (Annexure-A to the counter-affidavit), in which the names of the petitioners in the list of the employees, illegally appointed by unauthorized officers of the department have been mentioned. It was further submitted that in view of the principles enunciated by a constitution Bench of the Hon'ble Apex Court in the Case of **Secretary, State of Karnataka and others. V. Uma Devi (3) and others [(2006)4 SCC 1]**, the

impugned orders of termination cannot be legally faulted and the writ petition is liable to be dismissed.

6. After having heard the parties, this Court is of the opinion that the issues raised herein in the present proceeding are squarely covered by the judicial pronouncements made by a constitution Bench of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others. V. Uma Devi (3) and others (Supra)**. Indisputably, the appointment of the petitioners were made purely on provisional basis by order dated 24.10.1987 (Annexure-3) by the Special Land Acquisition Officer, Medium Irrigation Scheme, Dumka, but he was not authorised to make such appointment as the power vested in him for making such appointment was withdrawn way back on 02.12.1983. Furthermore, for making appointment of the petitioners and several other similar employees, neither public advertisement was issued nor rules of appointment and the selection procedure were followed. Therefore, the appointment of the petitioners was ab initio void and illegal. That being the factual position, no direction can be issued to the respondents for consideration of their case even for regularization of their services as one time measure as has been held by the Hon'ble Supreme Court in the case of **State of Karnataka vs. M.L. Kesari (supra)** in the light of the judgment by a constitution Bench in the case of **Secretary, State of Karnataka and others. V. Uma Devi (3) and others (supra)**.

7. Secondly, the claim for regularization of their services made on behalf of the petitioners on the ground that they were allowed to continue in service for quite a long time on the basis of entry in service by order dated 24.10.1987 (Annexure-3 to the writ petition) is untenable and has to be rejected in view of the principles

enunciated by a constitution Bench of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others v. Uma Devi (3) and others** (Supra). In paragraph-43 of the aforesaid judgment it has been held as under:-

“adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among the qualified persons, the same would not confer any right on the appointee.”

The Hon'ble Apex Court further went on to say in the same paragraph that :

“The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme. Merely because an employee had continued under cover of an order of the Court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.”

8. So far the present case is concerned, admittedly, appointment of the writ petitioners was not made after following the procedures mandated under Articles 14 and 16 of the Constitution of India. In fact, their appointment was made purely on provisional basis and that too by an officer who was not legally authorised to make



such appointment. Hence, their appointment has rightly been held to be illegal and their services have been terminated by the impugned orders dated 11.12.2002 and 06.01.2003 (Annexure-16 and 16/A to the writ petition). Therefore, there is no question of issuance of any direction to the respondents for consideration of their case for their regularization in service. The relief sought for on their behalf is completely misconceived and has to be rejected in view of the law laid down by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others v. Uma Devi (3) and others (Supra)**.

9. It would be relevant to mention here that the identical issues came up for consideration recently before a Full Bench of our own High Court in the case of **Ram Sevak Yadav vs. The State of Bihar** [2013(1) PLJR 964]. In paragraph-17 of the aforesaid judgment, the Full Bench has observed as under:

“A person appointed in rank illegality cannot complain that the termination procedure was arbitrary. Those who came in through the back door must go out through the same door.”

The Full Bench has summarized the principles enunciated by it in paragraph-43 of the aforesaid judgment.

Apparently, the appointment of the petitioners was made without following the procedures prescribed under the law and it was, in fact, a back door entry on the basis of an order passed by an officer having absolutely no authority to pass such order. In above view of the matter, applying the aforesaid principles enunciated by the Full Bench of our own High Court as also by the Constitution Bench of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others v. Uma Devi (3) and others (Supra)**, the petitioners are not entitled to any relief sought for in the present writ petition.

10. For the reasons recorded above, the present writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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