

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15498 of 2007

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Rajeeva Ranjan Sinha son of Sri Sachidanand Sinha, resident of B-105,
P.C. Colony Kankarbagh, P.S. Kankarbagh, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner and Secretary, Public Health Engineering Department, Nirman Bhawan, Bailey Road, Patna
2. The Engineer-in-chief-cum- Special Secretary Public Health Engineering Department, Nirman Bhawan, Bailey Road, Patna
3. The Regional Chief Engineer Public Health Engineering Department, Nirman Bhawan, Bailey Road, Patna
4. The Senior Research Officer, Industrial Waste Disposal and Water Pollution Research Unit, Public Health Institute (Under Public Health Engineering Department), Patna-4
5. The Chief Engineer (Mechanical) Public Health Engineering Department, Govt. of Bihar, Patna
6. The Committee through its Chairman i.e. the Commission-cum-Secretary, Public Health Engineering Department, Nirman Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr. Advocate
Mr. Rakesh Kumar

For the State Mr. Mritunjay Kumar A.C. to AAG 10

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 28-04-2015

This writ application seeks to challenge the order dated 24.10.2007 (Annexure-21) issued under the signature of the respondent Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar whereby the representation of the petitioner filed in the light of the order passed on the writ petition was considered and rejected. The petitioner has also prayed for payment of salary for the post of Sample Taker. A further prayer has been made to quash the

order dated 17.08.20012 (Annexure-18) whereby he was not treated to have been appointed validly on the post in question by the authority having requisite jurisdiction.

The petitioner earlier moved a writ petition being CWJC No. 10895 of 2002 in this Court challenging the order of his disengagement dated 17.08.2002 (Annexure-18). The same was made part of the batch of writ petitions and by a common order dated 13.07.2006 (Annexure-19) the same was disposed of directing the government to constitute a Committee for consideration/examination of the case of the petitioner(s) as one-time measure for regularization. The operative part of the said order is extracted hereinbelow:-

13. From the aforesaid decisions of the Hon'ble Apex Court it is quite apparent that the law with regard to the matter in dispute is already settled and the authorities concerned are duty bound to deal with all such matters as per the law and spirit of the said order of the Hon'ble Apex Court and all the decisions of any Court, running contrary thereto, shall have no effect in the said matter. Hence, the State of Bihar is directed to immediately take steps to constituter a committee

of three high officials concerned., presided by the Commissioner-cum-Secretary, Public Health Engineering Department, Govt. of Bihar and also including the Engineer-in-chief-cum-Special Secretary, Public Health Engineering Department to consider the cases of all the petitioners after giving them opportunity to place their respective claims and to decide the matters in issue afresh in accordance with the directions given in aforesaid judgment of the Hon'ble Apex Court in the case of Secretary State of Karnataka (supra) and the law settled therein with respect to the various schemes of the State Government concerning such appointments and regularization. The State Government is further directed to take steps for appointment of such Committee preferably within a period of one month from the date of this order so that the said committee may be able to decide the entire matters by 30th September, 2006 as it has been stated on behalf of the State Government on 10.5.2006 that the case of the petitioners who are fulfilling the eligibility criteria as per the policy will also be

considered and finalized on or before 30th September, 2006. The petitioners will be at liberty to move the said Committee after it is appointed by the State Government raising their grievances in accordance with law settled by the Honb'bled Apex Court.”

The government constituted a three-man Committee for consideration of the cases wherebefore the petitioner made his representation (Annexure-20). On a consideration of the case of the petitioner, the Committee resolved to reject the claim of the petitioner for the reasons stated therein which was communicated in the shape of an order dated 24.10.2007 which has been impugned in the case.

Brief facts having bearing on the case may first be noticed. The petitioner held the educational qualification of Intermediate of Arts. Subsequently, he claimed to have obtained a certificate of management course in Transistor/Tape/Television (B.W. & Colour) (Annexure-1). The father of the petitioner was serving in the department as the Senior Research Officer, Patna. By an order dated 27.01.1988 (Annexure-2) the petitioner was engaged by his father on ad hoc basis against a sanctioned post of Sample



Taker-cum-Lab Assistant for a period of four months. By another order dated 21.07.1988 (Annexure-3) the same officer allowed the petitioner to continue in the same status finding his service satisfactory. In the light of the government decision to stop such practice of engagement of personnel without adhering to the process of selection the services of the petitioner were dispensed with on 04.04.1989 (Annexure-5). On the strength of another decision of the government dated 09.02.1990 (Annexure-6) the petitioner claimed to have rejoined the post. The matter concerning the joining of the petitioner was reported to the government seeking a confirmation/clarification enabling the petitioner to draw salary. The same remained pending. In the meanwhile, the services of the petitioner was dispensed with as his engagement/appointment was held thoroughly illegal. The same was made subject matter of the writ petition which was disposed of vide order contained in Annexure-19.

Mr. A. K. Jha learned Sr. Counsel appearing on behalf of the petitioner, submitted that the post on which the petitioner was engaged and allowed to continue for more than ten years was a vacant and sanctioned post. He was therefore entitled to be considered in the light of the order passed by the



Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors (2006(2) PLJR SC 363)**. The order impugned does not record that his initial engagement was made by his father who had no jurisdiction to appoint or engage. The petitioner was not given a personal hearing by the Committee.

Counsel for the State, on the other hand, referring to the averments made in the counter affidavit submitted that his father was serving as Senior Research Officer in the office where the petitioner was initially engaged for a period of four months which was allowed to continue for an indefinite period of time by another order passed by the same officer in July 1988. The post on which the petitioner was engaged required a minimum educational qualification of Intermediate of Science. In paragraph 4 of the writ petition the petitioner has himself stated about his educational qualification as Intermediate of Arts. Subsequently, he claimed to have obtained the certificate in management course. The management certificate shall have no bearing in the case since the petitioner did not hold the basic educational qualification. The engagement of the petitioner by his father was a clear case of favouritism/nepotism and illegal



engagement/appointment without adhering to the provisions of the recruitment rules as also the provisions contained in Articles 14 & 16 of the Constitution of India. The case of the petitioner in the light of the direction of this Court was duly considered by the Committee which disapproved his claim for regularization.

From the pleadings on record the following facts appear not in dispute. The petitioner held the educational qualification of Intermediate of Arts while the post on which he claimed to have been engaged and functioned required minimum educational qualification of Intermediate of Science. No process of appointment or selection was gone into before such engagement/appointment as mandated under Articles 14 and 16 of the Constitution of India. There is nothing on record to demonstrate that any advertisement inviting application(s) was issued. The petitioner has only stated that a notice was published on the notice board of the office of his father whereafter he applied and was engaged. It further stands admitted that the engagement of the petitioner on the post in question was initially made by his father. Relevant facts stated in this regard have not been denied by the petitioner in the rejoinder to the counter affidavit. The seminal question is in



the backdrop of these facts whether the engagement/appointment of the petitioner can be held to be irregular or illegal. One need not advert to the case law in this regard since in the order passed on the writ petition of the petitioner this Court relying on Uma Devi case (supra) directed for one-time consideration of his claim. Paragraph 53 of the judgment in Uma Devi clearly states that such consideration is to be made only in respect of a person who was irregularly appointed and continued on the post in question uninterruptedly for a period of ten years or more without the aid or intervention of the Court. In the case at hand although there is no intervention of the Court and the petitioner continued on the post since 1990 to 2002 but the other relevant factors would become germane. This Court has no manner of doubt to hold that the initial engagement and continuance on the post by the petitioner was wholly contrary to the laid down procedure inasmuch he did not possess the requisite educational qualification for the post of Sample Taker. The appointment/engagement of the petitioner was wholly illegal. Further, it is a classic case of nepotism. These facts evidencing from the records persuade the Court not to find any merit in this case. Such appointment

cannot be countenanced by a writ court. The Court is not meant to get a seal of approval to such appointment/engagement obtained by wholly illegal manner.

In the result, the writ application fails. It is dismissed.

(Kishore Kumar Mandal, J)

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