

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.39 of 2002

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Ajay, Kumar Singh son of Shyamdeo Singh, resident of village- Mohamadpur
Bashiyamba, P.S. Salempur, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through its Secretary-cum- Commissioner, Water resources Department, Government of Bihar, Patna.
2. The Director of Land Acquisition and Rehabilitation Section, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
3. The Special Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
4. The Special Land Acquisition Officer, North Koal Pariyojna, Daltanganj, District- Palamau.
5. The Special Land Acquisition Officer, Madheyam Sichai Pariyojana, Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Suresh Roy, Sr. Adv.

Mr. Anant Kumar Bhaskar

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

Mr. Nagendra Sharma, AC to SC-29

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

C.A.V. JUDGMENT

Date: 7 -07-2015

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of office order contained in Memo No.1727 Patna, dated 21.09.2001 (Annexure-9) passed by the respondent No.2, whereby service of the petitioner on the post of Mapak (Amin) has been terminated with immediate effect on the ground that his initial appointment on the said post was illegal/ irregular, and was made dehors the constitutional scheme and by an officer who was not authorized to make such appointment. The petitioner is also aggrieved by the consequential order/ communication dated 07.11.2001 (Annexure-10) issued by the Anchal Adhikari, Jamui, whereby he was communicated about termination of his service by the aforesaid order dated 21.09.2001 (Annexure-9). The petitioner has further prayed for a direction for his

re-instatement in service with all consequential benefits.

2. Shorn of unnecessary details, the petitioner was appointed by office order dated 27.10.1986 (Annexure-1) issued by the Special Land Acquisition Officer, North Koyal Project, Daltonganj, Palamau (now in the State of Jharkhand) on the post of Mapak/ Amin for a period of three months only on provisional/ ad-hoc basis. As per the case of the petitioner he joined the aforesaid post of Mapak/ Amin on the same day and continued in service. Subsequently, services of 13 similarly situated employees including that of the petitioner were extended by an office order dated 19.01.1987 (Annexure-2) by the Special Land Acquisition Officer, North Koyal Project, Daltonganj, Palamau and it was further extended till 30.07.1987 by letter dated 21st May, 1987 (Annexure-3) issued by the respondent no.2. It is also the case of the petitioner that even thereafter his service was extended and he 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 petitioner in the DailyHindi 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. Aforesaid show cause notice has been brought on record as Annexure-5 to the writ petition. The petitioner filed his show cause producing his documents that he was in continuous service of the State for long time after his appointment made in the year 1986. Thereafter, on the basis of enquiry, and examination of

documents as also relevant records it was found that initial appointment of the petitioner was made only for a period of three months 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 vide letter dated 24.02.2001 (Annexure-7) by the respondent no.2 asking him to show cause as to why his service be not terminated on the grounds indicated in that show cause notice. The petitioner, in response to the aforesaid notice, submitted his show cause as contained in Annexure-8, whereafter by the impugned office order dated 21.09.2001 (Annexure-9), service of the petitioner has been terminated with immediate effect for the reasons recorded in that order, particularly on the ground that his appointment was 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 Senior counsel appearing on behalf of the petitioner submits that though initial appointment of the petitioner was made only for a period of three months on provisional basis vide order dated 27.10.1986 (Annexure-1), but his service was extended from time to time and he remained in continuous service till the impugned order was passed on 21.09.2001 (Annexure-9) terminating his service from the post of Mapak/ Amin. It is contended that in view of the order dated 11.01.2000 passed in C.W.J.C. No. 6586 of 1998 (Annexure-11) by a Bench of this Court as well as 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 order of termination of service of the petitioner is not sustainable in law and is fit to be set aside by

this Court with all consequential benefits and/ or the service of the petitioner is fit to be regularized.

5. The matter has been contested by the respondents by filing a counter-affidavit on behalf of the respondent no. 1 to 3. Learned State counsel, by referring to the averments made in the aforesaid counter-affidavit, submits that very entry of the petitioner in service by order dated 27.10.1986 (Annexure-1) was illegal and void, as the Special Land Acquisition Officer, North Koel Project, Daltonganj 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 that power was subsequently withdrawn in the year 1983 itself by Government letter dated 02.12.1983, whereas the appointment of the petitioner on the post of Mapak/ Amin was made by order 27.10.1986 (Annexure-1), when the Special Land Acquisition Officer was not authorized to make such appointment. According to him, since the initial appointment of the petitioner itself was illegal, therefore, any subsequent extension of his service 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 petitioner 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 name of the petitioner in the list of the employees illegally appointed by unauthorized officer of the department has been mentioned. It is contended that the facts involved

in the present case and that in C.W.J.C. No. 6586 of 1998 (Sunil Kumar Singh vs. State of Bihar & Ors.) are not similar and identical. 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 order of termination cannot be legally faulted and the writ petition is liable to be dismissed.

6. The present writ petition was earlier heard by a Bench of this Court on 04.08.2005 and by the aforesaid order it was directed to be listed after disposal of Civil Appeal No.5693 of 2004 by the Hon'ble Apex Court as the identical issues were pending consideration in the aforesaid civil Appeal. Indisputably, the aforesaid Civil Appeal No.5693 of 2004 along with other analogous appeals have, now, been finally disposed of by the Hon'ble Apex Court by order dated 11th July, 2006 in the light of the judgment of the Constitution Bench in the case of **Secretary, State of Karnataka and others. V. Uma Devi (3) and others (supra)**.

7. After having heard the parties and on consideration of the materials available on the record, 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 petitioner was made purely on provisional basis only for a period of three months by order dated 27.10.1986 (Annexure-1) by the Special Land Acquisition Officer, North Koel Project, Daltonganj, Palamau, 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 petitioner and several other similar employees, neither public advertisement was issued nor rules of appointment and selection procedure were followed. Therefore, the appointment of the petitioner was ab initio void and illegal. That being the factual position, no direction can be issued to the respondents for consideration of his case even for regularization of his service 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).

8. Secondly, the claim for regularization of his service made on behalf of the petitioner on the ground that he was allowed to continue in service for quite a long time on the basis of entry in service by order dated 27.10.1986 (Annexure-1 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.”

9. So far the present case is concerned, admittedly, appointment of the writ petitioner was not made after following the procedures mandated under Articles 14 and 16 of the Constitution of India. In fact, his appointment was made purely on provisional basis and that too by an officer who was not legally authorised to make such appointment. Hence, his appointment has rightly been held to be illegal and his service has rightly been terminated by the impugned order dated 21.09.2001 (Annexure-9 to the writ petition). Therefore, there is no question of issuance of any direction to the respondents for consideration of his case for regularization of his service. The relief sought for on his 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)**.

10. 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 petitioner 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 **Secretary, State of Karnataka and others. V. Uma Devi (3) and others** (supra), the petitioner is not entitled to any relief sought for in the present writ petition.

9. 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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