

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10543 of 2015

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Binod Choudhary son of Sri Jugal Prasad, resident of village Sarvaspur,
P.O. Kalwari, P.S. Kanti, District Muzaffarpur.

2.Rajiv Kumar, son of Ram Chandra Singh, resident of village Sharukahi,
P.O. Kabilpur, P.S. Kanti, district Muzaffarpur.

3.Mohan choudhary, son of Ram Chandra Choudhary, resident of village
Sarvaspur, P.O. Kalwari, P.S. Kanti, District Muzaffarpur.

.... Petitioner/s

Versus

1.The State of Bihar through the Secretary, Public Health Engineering
Department, Bihar.

2.The Secretary, Public Health Engineering Department, Bihar, Patna.

3.The Engineer in Chief Cum Public Health Engineering Department,
Bihar, Patna.

4.The Superintending Engineer, Public Health Engineering
Department,Muzaffarpur.

5.The Executive Engineer, Public Health Engineering Department,
Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Adv

For the Respondent/s : Mr. AAG13-A.K.Chaudhary

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 31-07-2015

No one appears for the petitioner.

Learned counsel for the State is present

The prayer of the petitioner in this writ

application reads as follows:-

*“for issuance of appropriate directions or
order or writ in the nature of mandamus, directing
the respondents to regularize the service of the
petitioner against the sanctioned and vacant post of
pump operator in the Public Health Engineering
Division, Muzaffarpur against which they have been
regularly working on daily wages basis for more
than two years.”*



Having regard to the aforementioned prayer of the petitioner and the law laid down by a Full Bench of this Court in the case of **Ram Sevak Yadav Vs The State of Bihar**, reported in **2013(1) PLJR 964**, such prayer of the petitioner has to be held to be wholly misconceived, inasmuch as, the law in this respect was laid down by the Full Bench in the following terms:-

"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.

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."

Thus, in view of the aforementioned settled position in law, the prayer of the petitioner of being regularized in service is rejected.

That being so, this writ application is wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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