

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7310 of 2010

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1. Kumar Dhananjay Singh S/O Sri Kumar Birendra Bahadur Singh R/O Moh Bhagirathi Lane, Mahendru In The House Of Prof. Nageshwar Tiwary, P.S.Sultanganj, Distt-Patna

2. Avinash Prasad S/O Late Bhairo Prasad R/O J/45, Peoples Co-Operative Colony, Kankarbagh, P.S.Kankarbagh, Distt-Patna

3. Sudha Lata Kumari W/O Santosh Kumar Singh R/O Moh Sakari Gali (Alla Buxpur), P.S.Alamganj, Distt-Patna-7

.... Petitioners

Versus

1. The Union Of India , Through The Secretary, Ministry Of Human Resources Department Of Secondary And Higher Education Shastri Bhawan, New Delhi

2. The Patna University, Through Its Vice -Chancellor Patna University, Patna

3. The Registrar, Patna University Patna

4. The National Institute Of Technology , Patna Through Its Director N.I.T.Patna

5. The Registrar, National Institute Of Technology Patna

.... Respondents

with

Civil Writ Jurisdiction Case No.7288 of 2010

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1. Dinesh Mahto S/O Chandeshwar Mahto R/O N.I.T. Campus, Patna, P.S.- Pirbahor, Distt.- Patna

2. Lalbabu S/O Mohan Sah R/O Mohalla- Sahganj, P.S.- Sultanganj, Distt.- Patna

3. Sambhu Kumar Balmiki S/O Late Baljora R/O N.I.T. Campus, Patna, P.S.- Pirbahor, Distt.- Patna

4. Indra Kumar S/O Jabahar Paswan R/O N.I.T. Campus, Patna, P.S.- Pirbahor, Distt.- Patna

5. Guddi Devi D/O Late Baljora R/O Dr. Ambedkar Colony, P.S.- Sultanganj, Distt.- Patna

6. Bharat Singh S/O Late Jagnarayan Singh R/O Mohalla- Bhagarathi Lane, P.S.- Sultanganj, Mehendru, Patna-6

7. Chandrika Yadav S/O Late Ramdeo Yadav R/O Mohalla- Bhagarathi Lane, Mehendru, P.S.- Sultanganj, Patna-6

8. Ganesh Kumar S/O Bhartu Ram R/O N.I.T. Campus, Patna, P.S.- Pirbahor, Distt.- Patna

9. Ram Sagar Raut S/O Late Hazari Raut R/O Vill.- Sursand, P.S.- Sursand, Distt.- Sitamarhi

.... Petitioners

Versus

1. The Union Of India Through The Secretary, Ministry Of Human Resources, Department Of Secondary And Higher Education, Shastri Bhawan, New Delhi

2. The Patna University Through Its Vice Chancellor, Patna University, Patna

3. The Registrar, Patna University, Patna

4. The National Institute Of Technology, Patna Through Its Director, N.I.T., Patna

5. The Registrar, National Institute Of Technology, Patna

.... Respondents

Appearance :

(In CWJC No.7310 of 2010)

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.

For the UOI : Mr. Anjani Kumar Sharan, CGC

For the University : Mr. Ashok Kumar Keshari, Adv.

For NIT : Mr. Y.V.Giri, Sr.Adv.

Mr. S.K.Giri, Adv.

(In CWJC No.7288 of 2010)

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.

For the UOI : Mr. Rajesh Kumar Verma, CGC

For the University : Mrs. Soni Shrivastava, Adv.

For NIT : Mr. S.K.Giri, Adv.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

3 13-05-2015

Heard learned counsel for the parties.

Having regard to the prayer of absorption/ regularization of the petitioners in the National Institute of Technology on the basis that the petitioners were engaged on daily wages by the Bihar College of Engineering and had also continued even after 28.1.2004 when NIT had taken over the assets and liabilities of Bihar College of Engineering, this Court would find it difficult to allow the prayer of the petitioners for two reasons; firstly, the petitioners at the end of the day happened to be the daily wage employees and the Full Bench of this Court in the case of Ram Sevak Yadav & anor. V. the State of Bihar & ors., reported in 2013(1) PLJR 964, has categorically held that there can be no regularization of the services of a daily wages employee.

Mr. Shahi, however, wanted to distinguish the aforementioned judgment of the Full Bench in the case of Ram Sevak Yadav (supra) on the ground that the petitioners' appointment even on daily wages was followed by the advertisement and the selection process and against the sanctioned post.

In the considered opinion of this Court that will not make any difference so far the ratio of the Full Bench is concerned because what law has been laid down by the Full Bench after consideration of the judgment of State of Karnataka v. Uma Devi, reported in (2006)4 SCC 1 and in the case of State of Karnataka v. M.L.Kesari, reported in (2010)9 SCC 247, is as follows:

“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.”

Apart from the aforesaid ratio of the Full Bench judgment in underlined portion paragraph no. A of what would really go against the petitioners is the terms and conditions on which the National Institute of Technology had sought to take over the existing liability of Bihar College of Engineering. In fact there was a clear provision that the NIT was not under any obligation to take over the service of all employees and its liability would be remained confined to the required number of sanctioned post by the Govt. of India as per its own staffing pattern. Thus, when a large number of employees working in the Bihar College of Engineering could not be adjusted despite their being continued in service only for want of sanctioned post the daily wager like petitioner cannot have a better fate.

Thus, for the reasons indicated above, these two applications must fail and are, accordingly dismissed.

(Mihir Kumar Jha, J)

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