

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5084 of 2015

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Bipin Kumar. Son of Sri Umakant Yadav. Resident of Village - Diloury,
Police Station - Pirpainti, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Panchayati Raj Department, Bihar, Patna.
3. The Director, Panchayati Raj Department, Bihar, Patna.
4. The Zila Parishad, Bhagalpur through its Chief Executive Officer.
5. The Deputy Development Commissioner-cum-Chief Executive Officer,
Zila Parishad, Bhagalpur.
6. The District Engineer, Zila Parishad, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Adv & Smt. Arpana
Kumari, Adv

For the State : Mr. Udai Shankar Singh AC to GA-2.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 02-04-2015 Heard learned counsel for the parties as with regard to
the following reliefs, prayed in this writ application:-

“For quashing the memo no. 204 dated 20.09.2014 (Annexure-16) issued by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Bhagalpur whereby and whereunder claim of the petitioner for regularization of his service to the post of Junior Engineer, has been rejected.

Further for a direction to the respondents to consider the case of regularization of the service of the petitioner who has been working since January 1999 as Junior Engineer on temporary basis having due appointment against the vacant and sanctioned post of the Junior Engineer by the Competent authority.

Further for direction upon the respondents to make payment of salary for the working period, which

has been held up for no cogent reason.”

Mr. Rajendra Narayan, learned senior counsel appearing on behalf of the petitioner while pressing for the aforementioned relief has basically concentrated on the aspect that the impugned order dated 20.09.2014 passed by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Bhagalpur rejecting claim of regularization of the petitioner suffers from error both on fact and in law. He would expand this aspect by relying on earlier order passed in the earlier round of litigation which according to him would give an insight to the petitioner being subjected to some sort of discrimination as some force were working against him even in respect of his continuation in service of Zila Parishad. He has further submitted that the petitioner having been allowed to work from 1999 onwards would definitely be entitled for regularization of his service keeping in view the observations made by the Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Uma Devi(3) & Ors.** reported in **2006(4)SCC 1**

Opposing the said prayer, learned counsel for Zila Parishad has submitted that not only the impugned order has



been passed in compliance of the observations and directions given in the earlier order dated 13.09.2012 C.W.J.C No. 16835 of 2012 (Bipin Kumar vs the State of Bihar and Ors) but also keeping in view that the petitioner was never employed by the Zila Parishad rather some of the Junior Engineers who wanted supporting hand had themselves engaged the petitioner and were in fact also paying him his emoluments at their own level through the process of passing hand bills. He has in fact also gone to explain that there was no relationship of employer and employee between the petitioner and Zila Parishad and thus there would be hardly any occasion for regularizing such service of the petitioner by Zila Parishad. He has also submitted that the claim of payment of salary from the funds of the Zila Parishad in view of the findings recorded in the impugned order would not be admissible and the petitioner for this purpose also has to look to those persons, the Junior Engineers, who had sought to take work from him.

Mr. Narayan, in reply has tried to explain that all these facts were not brought to the notice of this Court in the

earlier round of litigation by the Zila Parishad and thus such new plea can not be used against the petitioner in the present round of litigation.

Having regard to the aforementioned submissions, the first and foremost question to be answered by this Court would be as to what right the petitioner seeks to enforce in this writ application while assailing the impugned order passed by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Bhagalpur dated 20.09.2014, rejecting the claim of the petitioner for regularization of his service in Zila Parishad.

As noted above, the petitioner claims that he was employed by Zila Parishad on the post of Junior Engineer. The Zila Parishad however has its own rules laying down the manner of appointment on the post of Junior Engineer. The minimum requirement of such service rule is that an advertisement for filling up post would be published in newspaper followed by selection and the approval of the proposal of such selection and appointment by the Board of Zila Parishad. Admittedly, none of these procedures was

gone into while the petitioner was allegedly appointed in Zila Parishad, as has been fully explained by the respondents. This type of rank illegal appointment of the petitioner in which basic safeguards of Article 14 and 16 of the Constitution of India were never followed is *ab initio void*.

The next question therefore, would arise as to whether these type of illegal appointments could be regularized and whether this Court in the earlier round of litigation had given any indication or even an observation to regularize the services of the petitioner even his appointment is *void ab initio*. This Court however would not find any such direction issued to Zila Parishad in the earlier round of litigation, inasmuch as, the relevant portion of the order of this Court dated 13.09.2012, reads as follows:-

“4. In the aforesaid circumstances and considering the points in this case, especially the letter of appointment of the petitioner dated 29.11.1999 (Annexure-3) issued by the Deputy Development Commissioner-cum-Chief Executive Officer, Bhagalpur Zila Parishad, this Court directs the authority concerned to consider the claim of regularization of the services of the petitioner on the post of Junior Engineer in the Zila Parishad as petitioner had been appointed by the competent authority in the year 1999 on the vacant post of Junior Engineer on which he has been working continuously for more than 10

years as claimed by the petitioner.

5. The said authority must keep in mind the principles of law in that regard settled by the Apex Court as well as by this Court, namely in case of Secretary, State of Karnataka & ors. Vs. Uma Devi & ors. reported in 2006 (2) (SC) 363; in case of State of Karnataka and others Versus M. L. Kesari and others reported in (2010) 9 SCC 247 followed by a Division Bench of this Court in case of The State of Bihar & Ors. Versus Binay Kumar Singh & Ors. reported in 2011 (3) PLJR 547 as well as an earlier decision of a Division Bench of this Court in case of The Union of India & Ors. Vs. Central Administrative Tribunal, Patna & Ors. reported in 2005(4) PLJR 241.

6. The said authority shall take a final decision in this regard within three months from the date of receipt/production of a copy of this order. Till then, petitioner, if he is working, shall not be disturbed.”

This Court in fact in the aforesaid order had made it clear that the case of regularization of the service of the petitioner had to be considered in the light of the certain judgments referred therein. All these judgments came to be considered in the judgment of the Full Bench of this Court in the case of **Ram Sevak Yadav Vs The State of Bihar**, reported in **2013(1) PLJR 964**, wherein, reference itself was as with regard to alleged conflict in law was laid down by the Apex Court in the case of **Uma Devi (supra)** vis a vis in the

case of **State of Karnataka vs M.L. Kesari & Ors** reported in **2010(9) SCC 247**. The Full Bench after analyzing the law of regularization as also different details in the case of Uma Devi (supra) and M.L. Kesari (supra) had gone to lay down the law in the following terms:-

"We therefore sum up our conclusions and answer the reference as follows:-

*(A) **Uma Devi (supra)** 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."

If now the case of the petitioner has to be tested on the anvil of the law laid down by the Full Bench of this Court in the case of Ram Sevak Yadav (supra) the obvious conclusion would be that the petitioner's appointment being in teeth of Article 14 and 16 of the Constitution of India will never qualify for his regularization of service in Zila Parishad.

Thus, whatever reasons have been given in the impugned order for rejecting the claim of the petitioner has to be tested in the backdrop of the admitted position that the petitioner was never appointed from front door. His appointment thus being from the back door the exit for him will also be from the same door.

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

(Mihir Kumar Jha, J)

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