

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1581 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 936 of 2011**

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Jagat Prasad Sharma, son of Late Ganga Thakur, resident of village and P.O. Onama, P.S. Barbigaha, District - Munger at present C/o the Bihar State University and College Employees Federation, Lohia Nagar, Kankarbagh, Patna - 800020

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna
2. The Principal Secretary, Water Resources Department, Bihar, Patna
3. The Commissioner, Water Resources Department Bihar, Patna
4. The Secretary, Rural Works Department, Bihar, Patna
5. The Joint Secretary, Rural Works Department Bihar, Patna
6. The Under Secretary, Water Resources Department, Bihar, Patna
7. The Additional Secretary, Water Resources Department, Bihar, Patna
8. The Chief Engineer, Advance Planning, Water Resources Department, 7th Floor Biscomaun Tower, Bihar, Patna
9. The Joint Director, Pariyojna Mulyankan Koshang Anishabad, Patna
10. The Deputy Director, Water Science Division (North), Water Resources Department, Bihar, Patna

.... Respondents 1st Set-Respondents

11. Sri Prabhu Nandan Jha son of name not known, at present working as Gauge Reader C/o The Deputy Director, Water Science Division (North), Water Resources Department, Bihar, Patna
12. Sri Radha Krishna Gupta son of name not known, at present working as Gauge Reader C/o The Deputy Director, Water Science Division (North), Water Resources Department, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 02-05-2016

Heard learned counsel for the parties.

2. The present intra court Appeal, under Clause X of the Letters Patent of the Patna High Court, is directed against the order dated 21.07.2014 passed by the learned single Bench in CWJC No. 936 of 2011.

3. The appellant had sought quashing of the order contained in Letter No. 3131 dated 24.07.2002 directing for his removal from service and the consequent termination and further for his reinstatement.

4. As per the claim of the appellant, he was appointed as Seasonal Gauge Reader on 26.08.1972 and later on Gauge Reader on 05.05.1981. Thereafter, he was terminated on 27.01.1987 and again reinstated in service on 30.04.1987. It is his further case that he was regularized with effect from 22.10.1984 vide order contained in Letter No. 3162 dated 30.09.1992, which was subsequently cancelled by Memo No. 3659 dated 27.10.1994.

5. The appellant moved this Court in CWJC No. 2693 of 1995 against the said cancellation order, which was set aside by order dated 25.04.1995. The State moved in LPA No. 482 of 1995 against the order on the writ application, which was allowed on 17.11.1997. However, it was clarified that if some of the seasonal workers have, in



the meantime, been inducted under the work charge establishment, or have been subsequently regularized, the case of the writ petitioner must also be considered, if any person junior to him has been given benefit of such induction or regularization. However, upon attention of the Court being drawn to the direction of the Hon'ble Supreme Court in the case of *State of Haryana and Others v. Piara Singh and Others* reported as *AIR 1992 SC 2130* discouraging piecemeal regularization, it was indicated that if the Government intends to regularize the services of its employees, it must draw out a detailed scheme for such regularization and lay down norms and guidelines and thereafter, all persons, who are found eligible, must be considered for regularization and only thereafter any order granting regularization should be passed keeping in mind the provisions of Articles 14 and 16 of the Constitution of India.

6. The appellant moved in MJC No. 532 of 1999 raising the plea that the observation of the Court in the order dated 17.11.1997 has not been complied with and in view of the direction of the Court in the said contempt application, the services of the appellant was engaged as seasonal worker by order dated 16.05.2002. Subsequently, it appears that there was some internal communication in which the appellant has been referred as Seasonal Gauge Reader, but later on, by order dated 24.07.2002, it was directed that even as



per the letter dated 16.05.2002 there was no direction to appoint him as Seasonal Gauge Reader. On the basis of this direction, he was removed from service. Thereafter, the appellant moved the Bihar State Human Rights Committee of the Bihar Legislative Council which recommended for his reinstatement. However, the claim of the appellant was not accepted leading to filing of the writ petition.

7. Learned counsel for the appellant submits that the respondents have not acted in accordance with the order of the Court earlier passed in LPA No. 482 of 1995 on 17.11.1997, due to which the appellant has been forced to repeatedly move the Court. He further submits that the respondents no. 11 and 12 are junior to the appellant having been initially appointed as Seasonal Gauge Reader and their services having been regularized, the appellant has been discriminated against. It is further submitted that the learned single Bench has failed to appreciate that the appellant was in the regular establishment from 05.05.1981 to January, 1998 continuously. It is submitted that the case of the appellant is also covered by the decision of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and Others v. Uma Devi (3) and Others* reported as (2006)4 SCC 1.

8. Learned counsel for the respondents submits that the sole ground available to the appellant is with regard to respondents no. 11 and 12 being junior to him; but the same is also misplaced



since they were not Seasonal Gauge Readers and rather Work Charge Gauge Readers. In support of the same, he has referred to various official documents, including separate gradation list of the two categories, which indicates that the appellant was never in the list in which the names of the respondents no. 11 and 12 figure. It is submitted that the earlier regularization order, being a mistake committed on account of the appellant being treated as Work Charge Gauge Reader, upon realization of the same, it has been corrected and the appellant was reverted back to the original post held by him. It is submitted that the exercise having been undertaken by the respondents in compliance of the direction of the Division Bench of this Court under its order dated 17.11.1997 in LPA No. 482 of 1995, the appellant is not entitled to the relief sought for by him.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find substance in the submissions of the learned counsel for the appellant. All the developments, prior to 17.11.1997, were considered by the Division Bench of this Court in LPA No. 482 of 1995 and the following finding was recorded :

“11. We are of the view that the order earlier passed in favour of the respondents was void and illegal, being in breach of Articles 14 and 16 of the Constitution of India. The Government

also realize this, though later. Having realized its mistake the Government issued notices to the parties concerned and after affording them reasonable opportunity of representing their case, passed the impugned order correcting its earlier mistake. In such a case, the grant of relief in exercise of discretionary jurisdiction under Article 226 and 227 of the Constitution of India may not be justified.”

10. Accordingly, LPA No. 482 of 1995 filed by the State was allowed. However, the Court also made the following observations:

“13. We may only clarify that if in future the Government decides to induct the seasonal workers into the work charge establishment, it must do so following the relevant rules and circulars that are applicable. If some of the seasonal workers have, in the meantime, been inducted into work charge establishment, or have been subsequently regularized, the case of the respondents herein must also be considered, if any person junior to them has been given benefit of such induction or regularization.

14. We may only draw the attention of the Government to the directions made by the Hon’ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others [reported in 1992 SC 2130] that piecemeal



regularisation should be discouraged. If the Government intends to regularize the services of its employees, it must draw out a detailed scheme for such regularization and lay down norms and guidelines. Thereafter all persons who are found eligible must be considered for regularization and only thereafter any order granting regularization should be passed keeping in mind the provisions of Articles 14 and 16 of the Constitution of India.”

11. The appellant, not having moved against the order dated 17.11.1997 in LPA No. 482 of 1995, is thus precluded from going behind the order challenging the merits of the order by which he was reverted, since the earlier order or regularization in his favour has been held to be void and illegal being in breach of Articles 14 and 16 of the Constitution of India.

12. Thus, only issue which remains is whether seasonal workers have been inducted into Work Charge Establishment or have subsequently been regularized, who are junior to the appellant. The detailed discussion in the order of the learned single Bench on this point is based on the official records which clearly proves that the respondents no. 11 and 12 were ‘Work Charge Gauge Readers’ whereas the appellant was a ‘Seasonal Gauge Reader’ and only a communication describing the appellant as ‘Work Charge Gauge



Reader' leading to his wrong regularization, which was subsequently corrected, cannot be made a ground for the appellant to be equated with respondents no. 11 and 12. Moreover, the Division Bench earlier having upheld the order, by which the regularization of the services of the appellant has been cancelled on the ground that it was erroneously given as he was not a Work Charge Gauge Reader, not having been assailed, has attained finality.

13. It would further be of relevance to note that even before the learned single Bench as well as before this Court, the stand of the appellant is that he does not have any grievance against the respondents no. 11 and 12, meaning thereby that the regularization of their services have not been either challenged or shown to be unwarranted or illegal.

14. The attempt of the appellant to put the clock back by attempting to take the Court to the merits of the matter relating to the entitlement of the appellant for regularization of his services, besides being impermissible due to the issue having attained finality in the earlier order of the Division Bench of this Court dated 17.11.1997 in LPA No. 482 of 1995, is also not tenable in view of the law settled by the Hon'ble Supreme Court in the case of *Uma Devi (3)* (supra) read with the decision rendered in *The State of Karnataka vs. M.L.Kesari* reported as (2010) 9 SCC 247, which has been interpreted in the

decision of a Full Bench of this Court in the case of *Ram Sevak Yadav vs. State of Bihar* reported as *2013(1) PLJR 964*.

15. In view of the discussions made hereinabove, in our considered opinion, no ground has been made out warranting interference in the order passed by the learned single Bench dated 21.07.2014 in CWJC No. 936 of 2011.

16. Accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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