

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.462 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 6968 of 2012

Mehilar Baitha Son Of Pran Baitha Resident Of Village- Chenari, P.S- Chenari,
District- Rohtas At Sasaram

.... Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary Water Resources Department, Government of Bihar, New Secretariat, Patna.
2. The Chief Engineer, Water Resources Department, Government of Bihar, Dehri- On- Sone
3. The Superintending Engineer, Durgawati Construction Circle, Bhitri Bandh, Rohtas.
4. The Executive Engineer, Durgawati Right, Embarkment, Canal Division, Chenari, Rohtas.
5. The District Magistrate, Kaimur, Bhabua.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Prakash Verma, Advocate.
For the State : Mr. Anjani Kumar, AAG-4 with
Mr. Sanjay Prasad, AC to AAG-4

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-08-2016

Heard learned counsel for the parties.

The challenge in the present appeal under Clause-X of the Letters Patent of Patna High Court is to the order dated 8th May, 2012 by which C.W.J.C. No. 6968 of 2012, filed by the appellant has been dismissed.

The appellant claims that he was appointed on daily wages as a Cook in the year 1986. Thereafter, he represented to the



authorities to appoint him on a regular basis on the vacant post of Cook in the Inspection Bungalow at Chenari where he was working. The matter having been considered at various levels, ultimately by order dated 31.03.2010, the appellant along with other daily wage employees were removed from service. The appellant assailed the said order in C.W.J.C. No. 8479 of 2010 and by order dated 23.03.2011, a Single Bench of this Court disposed off the writ petition with a direction to the authorities to consider his case in terms of observations of the Constitution Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors.** reported as **(2006) 4 SCC 1**. In pursuance of the said direction, the concerned Executive Engineer passed order contained in Letter No. 85 dated 03.03.2012 rejecting the claim of the appellant for absorption of his service on the post of Cook. The appellant again moved this Court in C.W.J.C. No. 6968 of 2012 and dismissal of the writ petition has given rise to the present Letters Patent Appeal.

Learned counsel for the appellant submits that he was fulfilling the requirements for regularization/absorption of his service and the respondents have arbitrarily rejected his claim. It is submitted that the appellant continued to work from the year 1986 till 2010 and only due to his request for regularization, he was instead removed



from service. Learned counsel submits that as per the Government policy itself, persons who had completed more than 5 years as daily wagers till the cut off date 11.12.1990, were to be considered for regularization and, thus, the appellant has been discriminated against. It is submitted that even the Hon'ble Supreme Court in the case of **Uma Devi** (supra) has permitted consideration of the case for regularization of such employees who have continued in service for more than 10 years.

Learned counsel for the State submits that the law has now been settled inasmuch as the services of the persons who have not been appointed after open advertisement cannot be regularized. It is further submitted that after considering various decisions of the Hon'ble Supreme Court including that of **Uma Devi** (supra), a Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013(1) PLJR 964**, has held that services of such persons who were not appointed after open selection cannot be regularized.

Having considered the rival contentions, we do not find any merit in the present appeal. The appellant admittedly, was a daily wage worker and finally his service was terminated, at least with effect from 31.03.2010. Further, the authorities have given a categorical finding with regard to the fact that the appellant had



worked, in the last 5 years, as per the stipulation of the policy for regularization by the cut off date i.e., 11.12.1990 only for 61, 116, 344, 178 and 312 days, which did not entitle for his services to be regularized. This fact has not been controverted by the learned counsel for the appellant. Moreover, the other undisputed fact is that even such engagement of the writ petitioners as daily wagers was without following any procedure prescribed in law much less through open advertisement. The Hon'ble Supreme Court in the case of **Union of India v. Pradeep Kumar Saxena** reported as **1995 Supp (4) SCC 69**, has held that a daily wager holds no post and therefore the question of his regularization does not arise. Despite this, in view of various orders having been passed by the Courts for regularization, the matter was finally settled by the Constitution Bench of the Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi (3)** reported as **(2006) 4 SCC 1**, in which at paragraph-43 it has been held that daily wagers, contractual appointees and casual labourers do not hold a post and therefore have no claim for regularization. However, directions were issued for regularization of such persons in terms of the observations contained in paragraph-53 of the said judgment as a one time measure for those who may have completed ten years in that capacity. The Hon'ble Supreme Court clarified and reiterated the position in the case of **State of Karnataka**

vs. **Ganpathi Chaya Nayak** reported as (2010) 3 SCC 115 and **Satya Prakash vs. State of Bihar** reported as (2010) 4 SCC 179, that daily wagers were not entitled for consideration under paragraph-53 of the judgment in **Uma Devi** (supra).

In the case of **Satya Prakash** (supra), the appellant who had worked for more than 10 years on daily-rated basis in the Bihar Intermediate Education Council had approached this Court for regularization of his service and a learned Single Bench of this Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. In the appeal preferred before the Division Bench, it was held that merely because they had worked as daily wage employees with the Council would not confer any right for regularization as no public appointment was permissible dehors the recruitment rules. The Letters Patent Appeal was, therefore, dismissed in limine. Aggrieved by the same, the appeal was referred before the Supreme Court and after considering the Constitution Bench judgment in the case of **Uma Devi (3)** (supra), it was held at paragraph-12 to the following effect:

“12.The Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily wagers and those who were appointed irregularly in the sense that there was non-compliance with some procedure in the selection process which did not go to the root of the selection process. The appellants in our view will not fall in the category of the employees

mentioned in para 53 read with paras 15 and 16 of the Constitution Bench judgment.”

The policy decision of the State Government which was sought to be relied upon for regularization of those who may have completed 240 days in service has been considered by the Hon’ble Supreme Court in the case of **M.P. Housing Board v. Manoj Shrivastava** reported as **(2006) 2 SCC 702**, where at paragraph no. 17 it has been held to the following effect:

“17. It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. (See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra; Executive Engineer, ZP Engineering Divn v. Digambara Rao; Dhampur Sugar Mills Ltd. v. Bhola Singh; Manager, Reserve Bank of India v. S. Mani and Neeraj Awasthi.)”

Further, a similar circular of the year 1993 of the Department of Railways was considered by the Hon’ble Supreme Court in the case of **Pinaki Chatterjee v. Union of India** reported as **(2009) 5 SCC 193**, where at paragraphs-13 and 14, quoted hereinbelow, it has been held that such an outdated Circular contrary to the mandate of Article-14 of the Constitution moreso after the judgment of **Uma Devi** (supra) cannot be a cause of action to seek a mandamus.

“13. The said circular letter of the Railway Board which had been issued long back, however, did not take into consideration the limitation of power of a State to make appointments in total disregard of

mandatory provisions of the recruitment rules and/or the constitutional provision. This aspect of the matter has been considered in A. Umarani v. Coop. Societies holding: (SCC p. 126, para 45)

“45. No regularization is, thus, permissible in exercise of the statutory (sic executive) power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.” 14. Yet again a Constitution Bench of this Court in State of Karnataka v. Umadevi (3) laid down the law in the following terms: (SCC p.36, para 43)

“43. Thus, it is clear that 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 qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary

employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. 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.”

In the case of **Ram Sevak Yadav** (supra), the Full Bench after considering the decision of the Hon’ble Supreme Court in the case of **Uma Devi** (supra), **State of Karnataka vs. M.L. Kesari** (2010) 9 SCC 247 and various other cases has finally summed up the conclusions and at paragraph-43 held as under :-

“43. 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 viod 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.”

In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal, which accordingly, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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