

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.999 of 2013

IN

Civil Writ Jurisdiction Case No. 3837 of 2012

=====

Md. Parwez Akhtar Ansari, Son of Md. Whaiduddin Ansari, Resident of Mohalla-Nilkothi, P.O. + P.S.- Dehri-On-Sone, District- Rohtas

.... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Road Construction, Govt. of Bihar, Patna
3. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga
4. The Executive Engineer, Road Construction Department, Road Division, Begusarai

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Arun Kumar No. 1, Advocate

For the Respondent/s : Mr. S. Raza Ahmad, AAG-IX

Mr. Md. Kamil Akhtar, AC to AAG-IX

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 14-07-2016

This intra-court appeal is against the judgment and order dated 26.03.2012, passed in C.W.J.C. No. 3837 of 2012 (Md. Parwez Akhtar Ansari Vs. The State of Bihar and others) by which the writ petition challenging the order of removal from service has been dismissed.

We have heard learned counsel for the appellant- writ petitioner and learned AAG-IX for the State. We are not inclined to interfere in the matter.

It is not in dispute that the writ petitioner



along with two others was appointed on or about 03.12.1994 for a period of three months as Lower Division Clerks by the District Appointment Committee. Upon completion of three months probationary period and finding their services to be satisfactory the District Establishment Committee regularized their services. Subsequently, after about 10 years their services were dispensed with on the ground that they were illegally appointed. All of them individually challenged the same before this Court by various writ petitions. The writ petitions were allowed and the matter was remanded for fresh consideration after hearing the parties. Once again petitioner was ordered to be removed from service. He challenged this in the instant writ petition. Learned Single Judge exhaustively considered the case law in this regard and held that as the appointment was void ab initio the writ petition could not have been allowed.

We may notice the objection of the State. State clearly pointed out that the writ petitioner appellant was appointed to the post of Lower Division Clerk, which is a Class-III post. In the year 1994 such appointments to Class-III post could have only been made by the Bihar Public Service Commission and none else. Admittedly, here the appointment was made not by the Bihar Public Service Commission or upon



its recommendation but by the District Appointment Committee which had absolutely no authority to make any such appointment. These facts are not in dispute. If these facts are to be accepted then the appointment as made was void ab initio. We are not aware of any judgment of the Apex Court which says that even where an appointment is void ab initio for want of authority to appoint, if such appointment goes undetected for 10 years or so no action thereafter can be taken and such a void ab initio appointment becomes a valid appointment.

Learned counsel next submits that the same very learned Judge allowed the writ petitions of the other two persons who were similarly circumstanced and were similarly appointed. All the three had been dismissed by the same letter but so far as those two persons are concerned, their writ petitions were allowed. All we can say is that those two writ petitions though technically allowed were only remanded for fresh consideration. From the writ orders it does not appear that in those two cases State had taken any objection as to the fact that it was BPSC which can only appoint. In any view of the matter, the learned Single Judge in those two cases also did not order reinstatement but remanded the matter for fresh consideration in accordance with law.

In that view of the matter, we find no merit
in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

U			
---	--	--	--