

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.166 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 15650 of 2012**

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Braj Mohan Singh, aged about 43 years, S/O Sri Devendra Prasad Singh, behind
Pathology Building, P.O. - Veterinary College Camp, P.S. - Hawai Adda, Bihar
Veterinary College, Patna - 14

.... Appellant/s

Versus

1. The State of Bihar
2. Bihar Agriculture University, Sabour, P.S. - Sabour, Distt. - Bhagalpur
3. Bihar Veterinary College Through Its Principal, Patna - 14

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Advocate.
Mr. Mukesh Kumar Singh, Advocate.

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: 18-05-2016

Heard learned counsel for the parties.

The present intra-court appeal, under Clause X of the
Letters Patent of Patna High Court, is directed against the order dated
02.01.2014 passed by the learned single Bench by which CWJC No.
15650 of 2012, filed by the appellant, has been disposed off with
liberty to make application for consideration of his case for
recruitment.

The appellant had filed the writ petition seeking a

direction to the respondents to regularize his service on a Class-IV post with effect from the date of appointment/joining i.e., 08.11.1995 or in alternative at least from the date of his joining on contract basis with effect from 01.12.2001.

Learned counsel for the appellant submits that as he has been working initially on daily wages and then on contractual basis, on account of there being vacant Class-IV post in the college, his services ought to have been regularized as he has been working for a long period. He submits that the Hon'ble Supreme Court, in the cases of *Secretary, State of Karnataka v. Uma Devi (3)* reported as (2006) 4 SCC 1 as well as *Amarkant Rai v. State of Bihar* reported as (2015) 8 SCC 265, has held that as a one time measure, the authorities should consider regularization of services of persons who have worked for more than ten years and, thus, the case of the appellant is required to be considered in the light of the said direction of the Hon'ble Supreme Court.

Learned counsel for the respondents submits that the service of the appellant cannot be regularized as his initial appointment itself was without following the prescribed procedure, muchless, in accordance with the requirement of Article 14 of the Constitution of India. It is submitted that the initial engagement, as daily wager, was without following any procedure and thus,

regularization cannot be considered as a matter of right. It is further submitted that the appellant may take part in the process of regular appointment for the vacant post.

Having considered the submissions of learned counsel for the parties, we do not find any merit in the present appeal. The admitted position is that the appellant was appointed as daily wager without there being any procedure adopted and subsequently, he was engaged on contract basis. The fact that his initial engagement was without following the prescribed procedure for appointment, thus, is contrary to the mandate of Article 14 of the Constitution of India, without open competitive selection, being illegal and *void ab initio*, which cannot be regularized under any circumstances. This has also been held by a Full Bench of this Court in the case of ***Ram Sevak Yadav vs. The State of Bihar & Ors.*** reported as **2013(1) 964**, after considering the decisions of the Hon'ble Supreme Court in the cases of ***Uma Devi (3)*** (supra) as well as ***The State of Karnataka vs. M.L.Kesari*** reported as **(2010) 9 SCC 247**. Moreover, the appellant continuing on contractual basis cannot claim any right of regularization.

As far as the case of ***Amarkant Rai*** (supra) is concerned, the facts were materially different. The appellant before the Hon'ble Supreme Court was working on a regular post for 29 long

years, though on daily wage basis, but pursuant to the resolution of the State Government itself, he was required to be considered and the Court held that such was within the exception carved out in the case of *Uma Devi (3)* (supra), whereas in the present case, as per the own showing of the appellant, as is also obvious from the certificate issued to him by the Principal of the College concerned dated 05.12.2006 (Annexure-1 to the writ petition), his engagement was:

“As per the emergency needs of different departmental works in laboratories and movement of papers/files etc. the services of security staff under security section have been utilized from time to time whenever required.
Braj Mohan Singh, S/o Sri Devendra Prasad Singh, Vill.- Kushday, P.O & P.S.-Lalganj, Dist. Vaishali is working as a security staff since his joining from 01.11.1995 to till date.”

This clearly indicates that the appellant was never working regularly on any sanctioned post.

Thus, the view taken by the learned single Bench does not warrant any interference. Accordingly, the Letters Patent Appeals stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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