

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.623 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 9042 of 2011**

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1. The State of Bihar, through the Commissioner-cum-Secretary, Water Resources Department, Govt. of Bihar, Patna.
 2. The Director, Land Acquisition and Rehabilitation, Water Resources Department, Govt. of Bihar, Patna.
 3. The Special Land Acquisition Officer, Water Resources Department, Gandak Project, Chapra.

.... Respondents-Appellant/s

Versus

Pradeep Narayan Jha, Son of Sri Ramesh Jha, resident of Mohalla Professor's Colony, (Ranbhommi Maidan), P.S. Khazanchi Haat, District Purnea.

.... Petitioner-Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Chandra, A.C. to S.C.-6

For the Respondent/s : Mr. Satyavrat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-10-2016

The present Letters Patent Appeal is directed against an order passed by a learned Single Bench of this Court on 31st October, 2013 whereby, the writ application was allowed and the order of termination dated 27th April, 2011 was set aside with the direction that the writ applicant would be reinstated in service forthwith.

The respondent herein, the writ applicant, was initially appointed on 7th January, 1982 on *ad hoc* basis for six months. Such appointment was extended from time to time. The learned Single Bench



allowed the writ application for the reason that 171 employees, who were appointed between 1978 to 1982 along with the writ applicant was promoted on the post of Typist, are continuing in service. The writ application was allowed and the order of termination was ordered to be set aside for the reason that action of the appellant in adopting a different yardstick was found to be violative of equality clause enshrined in Articles 14 and 16 of the Constitution of India.

Learned counsel for the appellants refers to Full Bench Judgment of this Court in Ram Sevak Yadav Vs. The State of Bihar & Ors. Case, 2013 (1) PLJR 964 to contend that the writ applicant was appointed on *ad hoc* basis without advertisement and without giving opportunity to all eligible candidates to apply to be considered for appointment. Such an appointment is illegal appointment as has been held by the Full Bench in Ram Sevak Yadav's case (supra). Therefore, such illegally appointed person could not have been ordered to be reinstated.

On the other hand, learned counsel for the writ applicant submits that the writ applicant is being discriminated by the action of the appellants as his services alone have been terminated which discrimination cannot be perpetuated on the strength of illegal orders of termination passed on 27th April, 2011.

We have heard learned counsel for the parties and find



that the order passed by the learned Single Bench is not sustainable in law. The learned Single Bench allowed the writ application on the ground that the appointment was made by a person, who was vested power to make appointment and was appointed against sanctioned and vacant post. Even if that be so, but appointment against a sanctioned post can be made only after following the due procedure for making appointment against the public post, i.e. after wide publicity and giving opportunity to all eligible candidates to apply and to be considered. Such is the view of the Full Bench of this Court in Ram Sevak Yadav's case (supra) wherein it is has been held as follows:-

“43. We therefore sum up our conclusions and answer the reference as follows :-

(A) *Uma Devi* (supra) prohibits regularisation 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 regularised under any circumstances.

(C) Irregular appointments can be regularised 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 the light of the aforesaid judgment, we find that the order of termination of the writ applicant could not have been interfered with by the learned Single Bench. Plea of discrimination is untenable for the reason that there cannot be any parity in illegality. Reference may be made to the decisions of the Supreme Court in the cases of Chandigarh Administration Vs. Jagjit Singh, (1995) 1 SCC 745, and Kulwinder Pal Singh Vs. State of Punjab, AIR 2016 SC 2281.

In view of the above, we find that the order passed by the learned Single Bench is not sustainable. Consequently, the Letters Patent Appeal is allowed and the order passed by the learned Single Bench is set aside and the writ application is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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