

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6443 of 2014

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Bhikhari Ram Son of Late Nannu Ram, Resident of Village and P.O- Ughara, P.S Bahadurpur, District- Darbhanga.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Tele Communication, Ministry of Communication and Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi-1.
2. Chief Managing Director, Bharat Sanchar Nigam Limited, Statesman House, Bara Khamba Road, New Delhi.
3. The Chief General Manager, Bharat Sanchar Nigam Limited, Bihar Circle, Patna.
4. The General Manager, Bharat Sanchar Nigam Limited, Darbhanga.
5. The District Engineer (Admn), Office of the General Manager, Telephone Department, Darbhanga.
6. The District Engineer (Rural) Office of the General Manager, Telephone Department, Darbhanga.
7. The Office Incharge, Telegraph Office, Darbhanga.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6725 of 2014

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Pintu Ram, Son of Sri Hari Shankar Ram, Resident of Village Lalbagh Jethiyah, P.O. Lalbagh, Police Station - Town Thana (Darbhanga), District – Darbhanga.

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Department of Telecommunication, Ministry of Communication and Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 1.
2. The CMD, BSNL, Statesman House, Barakhamba Road, New Delhi – 1.
3. The Chief General Manager, BSNL, Bihar Circle, Patna.
4. The General Manager, BSNL, Darbhanga.
5. The DE(Admin), O/o the GMTD, Darbhanga.
6. The DE (Rural), O/o the GMTD, Darbhanga.
7. The Officer-In-Charge, Telegraph Office, Darbhanga.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 14867 of 2014

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Rajendra Ram, Son of Shree Yogendra Ram, resident of Mohalla - Bapu Nagar Colony, Police Station - Laheriasarai, Town and District – Darbhanga.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Telecommunication, Ministry of Communication & Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 1.

2. The C.M.D., Bharat Sanchar Nigam Limited, Statesman House, Barakhamba Road, New Delhi – 1.
3. The Chief General Manager, Bharat Sanchar Nigam Limited, Bihar Circle, Patna.
4. The General Manager, Bharat Sanchar Nigam Limited, Darbhanga.
5. The S.D.O., Telephones, Darbhanga.

.... Respondent/s

Appearance :

(In CWJC No.6443 of 2014)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate.

For the BSNL : Mr. Harendra Prasad Singh &
Mr. Santosh Kumar, Advocates.

(In CWJC No.6725 of 2014)

For the Petitioner/s : Mr.

For the U.O.I. : Mr. Raj Kamal, Advocate (CGC).

For the BSNL : Mr. Harendra Prasad Singh &
Mr. Santosh Kumar, Advocates

(In CWJC No.14867 of 2014)

For the Petitioner/s : Mr. Baidya Nath Thakur, Advocate.

For the BSNL : Mr. Harendra Prasad Singh,
Mr. Santosh Kumar &
Ms. Renuka Sharma, Advocates.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 07-04-2016

Heard learned counsel for the parties.

These three writ petitions have been heard together and are being disposed off by a common order as they have been filed against the common order dated 31st December, 2013 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in O.As. No. 422 of 2011, 484 of 2011 and 515 of 2011.

The petitioners are the applicants in the said Original Applications before the Tribunal and had moved for quashing of the orders

of termination of their services and for a direction to regularize their services in the department with effect from the date of their eligibility with all consequential benefits. The Original Applications were dismissed by the impugned order against which the writ petitions have been filed by the appellants.

Learned counsel for the petitioners submits that they having worked for long many years, their services were required to be regularized and at this late stage of life the order to terminate them is not proper. It has further been submitted that once finding them eligible the matter of their regularization and absorption was under consideration by the higher authorities, it was not only impermissible but rather illegal for the superior authorities to order that after completion of one month from the date of the receipt of the letter dated 30.05.2011/30.06.2011 the services of the petitioners as casual/part time labourers would stand terminated. It is submitted that the stand of the department that such appointments were illegal and thus their case cannot be considered is untenable in light of the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka v. Uma Devi (3)** reported in **(2006) 4 SCC 1** and further explained in the case of **State of Karnataka v. M. L. Kesari** reported in **(2010) 9 SCC 247**. It is submitted that the Supreme Court in the case of **Uma Devi (3)** (supra) giving a one time opportunity to the State authorities to consider regularization of people

who had continued in service for more than 10 years, and the petitioners being covered by such direction, the decision not to regularize them and rather terminate them is perverse and totally arbitrary. It is further submitted that later on the Hon'ble Supreme Court in the case of **M. L. Kesari** (supra) has clarified that only illegal appointments do not qualify for regularization but the persons employed and possessing prescribed qualification and working against sanctioned post, but not having been selected after undergoing the process of open competitive selection, have been considered to be irregular and not illegal and, thus, as per the decision of the Hon'ble Supreme Court in the case of **Uma Devi (3)** (supra), their cases have wrongly been rejected.

Learned counsel for the respondents submits that the department has neither acted illegally nor discriminated against the petitioners and the order impugned is well considered. It is submitted that the petitioners were not duly appointed and in fact Pintu Ram (petitioner in C.W.J.C. No. 6725 of 2014), was inadvertently approved as full time casual labour in the period when there was complete ban on engagement of labour and any wrong/lapse committed by any authority cannot fasten the department with any liability and it is always subject to correction at any time such error is detected and moreover, such approval to convert his service as full time casual labour will not confer any legal right for regular employment. He submits that in the case of Rajendra Ram

(petitioner in C.W.J.C. No. 14867 of 2014), there are no records of his initial engagement and even he has not brought on record any material to indicate such fact. It is stated that he was initially hired as contingent labour by the office at Darbhanga and was working as contingent staff and not a part time labour, as claimed by him, and performed the duty of sweeper. It is further submitted that he has also not disclosed as to how he was engaged as part time sweeper and by whom and in any case such recruitment of any part time or full time casual labour having been banned under order dated 14.08.1984 and him not having been appointed even as part time labour, no benefit can be derived by him.

As far as case of Bhikhari Ram (petitioner in C.W.J.C. No. 6443 of 2014), is concerned, it is submitted that there is no record with regard to his engagement at Laheriasarai nor any material produced to indicate such fact except for certificate issued by the Officer-in-Charge, Laheriasarai which only shows that initially he was engaged as part time Sweeper-cum- Farash in 1991. Learned counsel submits that such appointment not only being without following any procedure prescribed in law for such recruitment nor there being any indication to show that such engagement was against any sanctioned post, and further the same having been made contrary to and against the specific bar of any recruitment of part time or full time casual labour, clearly falls within the category of illegal appointment, which is impermissible and such cases cannot be

considered for regularization even in the light of the decisions of the Hon'ble Supreme Court in the cases of **Uma Devi (3)** (supra) and **M. L. Kesari** (supra). Learned counsel submits that in view of there being various decisions open to different interpretations, the matter was referred to the full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar (Full Bench)** as to whether the decision of the Hon'ble Supreme Court in the case of **M.L. Kesari** (supra) makes a departure from the distinction between an illegal and irregular appointment as held in the case of **Uma Devi (3)** (supra) for purposes of regularization, in which, by decision dated 01.02.2013, reported in **2013 (1) PLJR 964**, the Hon'ble Bench at paragraph 43 has held that an illegal appointment *void ab initio*, made contrary to the mandate of Article 14, without open competitive selection, cannot be regularized under any circumstances and thus the order impugned does not suffer from any infirmity.

Having considered the rival contentions, we do not find any merit in the submissions of learned counsel for the petitioners. The admitted fact that the appointments of the petitioners on any post, may be part time or casual, was clearly without following any procedure prescribed for such appointment. Further the petitioners have also not pleaded or shown that such appointments were against sanctioned posts as also the fact that any casual status which may have been granted to any of the petitioners having been specifically banned during the period, even if

they have continued on such post for any period of time, shall not confer them with any advantage, much less a legal right, for regularization of their services. The law being settled by various pronouncements of the Hon'ble Supreme Court and the distinction elaborated by the Hon'ble Supreme Court in the case of **M.L. Kesari** (supra) with regard to the decision rendered in **Uma Devi (3)** (supra), has been clarified by a Full Bench of this Court in the case of **Ram Sevak Yadav** (supra), where the Court has finally summed up the reference at paragraph 43, which we deem it proper to quote hereinbelow:

“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) All illegal appointment void, 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.”

This Court, besides being in agreement with the conclusion of the Full Bench, is also bound by the same. In view of the

law clearly laid down by the Full Bench, this Court finds that the claim of the petitioners for regularization of their services cannot be sustained in the facts and circumstances and their Original Applications have rightly been dismissed. Thus, the consequential decision of the authorities directing that their services would no longer be required and shall stand terminated after one month also cannot be faulted. We may further note here, that as it is not the case of the petitioners that the services of anyone junior to them or having been similarly situated has been regularized, we also do not find it a case of discrimination against the petitioners.

For the reasons aforesaid, we find no ground to interfere in the order impugned and accordingly, the writ petitions stand dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./-

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