

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.551 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 13920 of 2012**

Ashok Kumar Jha, S/o Sri Laxman Jha, R/o Village Lakhnour, PS-Lakhnour, Distt. Madhubani, Priory worked as daily wager peon in the Bihar State Credit and Investment Corporation Limited, Indra Bhawan, 4th Floor, Ram Charitra Singh Patna, Patna- 800001.

... .. Petitioner - Appellant

Versus

1. The State of Bihar.
2. Bihar State Credit and Investment Corporation Limited, (herein after referred as BICICO) through its Managing Director, Indra Bhavan, 4th Floor, Ram Charitra Singh Path, Patna- 800001
3. The Chairman cum Principal Secretary, Department of Industry, New Secretariat, Patna.
4. The Managing Director, BICICO, Indra Bhavan, 4th Floor, Ram Charitra Singh Path, Patna- 800001.
5. The Joint Secretary, General Administration, Bihar, Patna.
6. The Deputy Manager, Administration, BICICO, Patna- 80001.
7. The Board of Directors, BICICO, Bihar, Patna- 80001.

.... .. Respondents - Respondents

Appearance:

For the Appellant : Mr. Shivendra Kishore, Sr. Advocate.
Mr. Jai Kishore Poddar, Advocate.

For the BICICO
Respondent Nos. 2, 4, 6 & 7) : Mr. Nirmal Kumar, Advocate.
Mr. Mayank Shekhar, Advocate.
Mr. Sanjay Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 23-08-2016

The challenge in the present Letters Patent Appeal is to
an order passed by the Single Bench of this Court dated 18.02.2014,
whereby the writ application filed by the appellant claiming
regularization of services remained unsuccessful. As per the appellant,

he was engaged on daily wages on 13.06.1989 but his services were discontinued on 12.09.2008.

2. As per the appellant, he earlier invoked a writ application in this Court in which there was a direction to consider the claim of regularization of services of the appellant and thereafter, the committee has passed an order dated 17.07.2012 that the vacancy in Class IV post arose only on 23.01.2002 and the services of the appellant was terminated on 12.09.2008. Therefore, he does not satisfy the requirement of working against a vacant post for a period of more than ten years. It was also found that no regular mode of appointment was followed, when the appellant was appointed on daily wage.

3. The Full Bench of this Court in a Judgment reported in **2013(1) PLJR 964 (Ram Sevak Yadav Vs. State of Bihar & Ors.)** has examined the Supreme Court judgment in *State of Karnataka Vs. Uma Devi* reported in (2006) 4 SCC 1 and *State of Karnataka Vs. M.L. Kesari* reported in (2010) 9 SCC 247 and concluded as under:

“43.(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 void abinitio 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.”

4. The first test before an order of regularization can be passed is availability of a vacancy. When the appellant was appointed on daily wages on 13.06.1989, there was no vacancy in Class IV post as such vacancy came in existence on 23.01.2002. The second condition is that there should be wide publicity of the post available to give opportunity to the candidates and after considering the claim of all other eligible candidates, an appointment have been made. Admittedly, there was no advertisement when appellant was appointed on daily wages. Thus, the second test which is in larger public interest is not satisfied.

5. Learned counsel for the appellant contends that two other similarly situated employees, namely, Md. Muzaffar Hussain and Fauzdari Pd. Yadav have been regularized. Therefore, there should be parity in action of the State.

6. In the impugned order itself, it has been mentioned that Md. Muzaffar Hussain and Fauzdari Pd. Yadav were appointed



on 07.08.1985 and 20.05.1986 when there was a vacant post available. Since they have worked against a vacant post for more than ten years, therefore, they were considered to be regular appointment and consequently, granted regularization of services. But in the case of the appellant, he has not worked for more than ten years after the Class 'IV' post became available. Thus, there is no parity with the case of Md. Muzaffar Hussain and Fauzdari Pd. Yadav. Even if there is similarity, there cannot be any parity in the illegality. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of ***Kulwinder Pal Singh Vs. State of Punjab*** reported as ***AIR 2016 SC 2281***, in which it was held as under:

“17. Learned counsel for the appellants contended that when the other candidates were appointed in the post against de-reserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In *State of U.P. And Ors. v. Rajkumar Sharma and Ors.* (2006) 3 SCC 330 : (2006 AIR SCW 1985) it was held as under:-

“15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.* (1996) 7 SCC 426: (AIR 1996 SC 540); *Secy., Jaipur*



Development Authority v. Daulat Mal Jain(1997) 1 SCC 35; State of Haryana v. Ram Kumar Mann(1997) 3 SCC 321: (1997 AIR SCW 1574); Faridabad C.T. Scan Centre v. D.G., Health Services (1997) 7 SCC 752: (AIR 1997 SC 3801); Jalandhar Improvement Trust v. Sampuran Singh (1999) 3 494 : (AIR 1999 SC 1347); State of Punjab v. Dr. Rajeev Sarwal (1999) 9 SCC 240; Yogesh Kumar v. Govt. of NCT, Delhi (2003) 3 SCC 548 : (AIR 2003 SC 1241); Union of India v. International Trading Co. (2003) 5 SCC 437: (AIR 2003 SC 3983) and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority (2006) 2 SCC 604) : (AIR 2006 SC 1142)”.

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality.”

7. In view of the above discussion, we do not find any error in the order passed by the learned Single Bench of this Court. Accordingly, present Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	NAFR
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