

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.290 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 18293 of 2012

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1. The State of Bihar
 2. The Commissioner-Cum-Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
 3. The Joint Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
 4. The Chief Engineer, Water Resources Department, Government of Bihar, Muzaffarpur
 5. The Superintending Engineer, Head Work Division No. 1, Bagmati Nagar, Sitamarhi
 6. The Executive Engineer, Head Work Division No. 1, Bagmati Nagar, Sitamarhi
 7. The District Appointment Committee through the District Magistrate, Sitamarhi

.... Appellant/s

Versus

1. Ram Badan Singh Son of Late Deo Narain Singh Resident of Village : Suppi, P.S. : Majorganj, District : Sitamarhi
2. Lal Babu Singh Son of Late Ambika Singh, Resident of Village : Suppi, P.O. : Suppi, P.S. : Majorganj, District : Sitamarhi
3. Raj Kumar Sharma Son of Late Mathura Prasad Sharma Resident of Village : Nabi Nagar, P.O. : Mojhawal, P.S. : Jamui, District : Jamui
4. Nawal Kishore Singh Son of Late Rijhan Singh, Resident of Village : Madhopur, P.O. : Madhopur, P.S. : Majorganj, District : Sitamarhi
5. Birendra Kumar Singh @ Birendra Singh, Son of Shri Ram Kalewar Singh Resident of Village : Madhopur, P.O. : Madhopur, P.S. : Majorganj, District : Sitamarhi
6. Makeswar Singh, Son of Late Shri Narain Singh, Resident of Village : Madhopur, P.S. : Majorganj, District : Sitamarhi
7. Satya Narain Singh Son of Late Rijhan Singh, Resident of Village : Suppi, P.O. : Suppi, P.S. : Majorganj, District : Sitamarhi
8. Farman Mian Son of Late Raja Mian, Resident of Village : Sheonagar, P.O. Ashogi, P.S. : Bargania, District : Sitamarhi
9. Nagendra Paswan Son of Late Lagan Paswan Resident of Village : Adambandh, P.O. : Bengahi, District : Sitamarhi
10. Pradeep Kumar Sonier Son Of Jai Prakash Narain Resident Of Village : Pyarepur, P.S. : Barauli, District : Gopalganj

.... Respondent/s

with

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Letters Patent Appeal No. 356 of 2014

Along with

Interlocutory Application No. 1716 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 2801 of 2013

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1. The State of Bihar

2. The Commissioner-Cum-Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
 3. The Joint Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
 4. The Chief Engineer, Water Resources Department, Government of Bihar, Muzaffarpur
 5. The Superintending Engineer, Head Work Division No. 1, Bagmati Nagar, Sitamarhi
 6. The Executive Engineer, Head Work Division No. 1, Bagmati Nagar, Sitamarhi
 7. District Appointment Committee through the District Magistrate, Sitamarhi
- Appellant/s

Versus

Shashi Kumar Mandal Son Of Late Shahdeo Mandal, Resident of Village- Rana,
P.O.- Telhar, District- Darbhanga.

.... Respondent/s

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Appearance :

(In LPA No. 290 of 2014)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In LPA No. 356 of 2014)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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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: 28-06-2016

Heard learned counsel for the parties

The present Letters Patent Appeals arise out of a
common order and thus being disposed off together.

Re.: Interlocutory Application No. 1716 of 2014

The Interlocutory Application has been filed in L.P.A.
No. 356 of 2014, seeking condonation of 39 days delay in filing of the
Letters Patent Appeal.

Upon hearing learned counsel for the parties and
considering the submissions made in the Interlocutory Application, we

find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the delay in filing of the Letters Patent Appeal is condoned.

Interlocutory Application No. 1716 of 2014 stands disposed off.

Re.: Letters Patent Appeals No. 290 of 2014 and 356 of 2014.

The present intra Court appeals under Clause-X of the Letters Patent of Patna High Court has been preferred by the appellants being aggrieved by the order dated 29.07.2013, passed by the learned Single Bench by which C.W.J.C. No. 2801 of 2013 and C.W.J.C. No. 18293 of 2012, filed by the respondents have been allowed.

The writ petitioners claimed to be retrenched employees of the Water Resources Department having worked between the years 1980 to 1985. Some of them moved this Court earlier in C.W.J.C. No. 5039 of 1997 which was disposed off on 22.11.2000, in terms of the judgment of the Ranchi Bench of this Court (as it then was) in C.W.J.C. No. 1377 of 1997(R) and analogous cases decided on 28.02.2000. The State of Bihar preferred L.P.A. No. 939 of 1999 against the said order. In the meantime, the Hon'ble Supreme Court by order dated 30.10.2000, passed in S.L.P.(C) No. 18154 of 1999, gave a direction to the State of Bihar to regularize the services of daily wage



workers in accordance with the procedure indicated in the scheme dated 18.08.1993. Though Committees at the State and District level were constituted but the services of the writ petitioners were not regularized. A similarly situated person namely, Sharma Nand Prasad moved this Court in C.W.J.C. No. 5292 of 2004, seeking a direction to appoint him on Class-IV post in view of the Government policy, resolutions and circulars issued in this regard. The writ petition was withdrawn on 20.12.2004, in view of the statement made in the counter affidavit stating that his case was under active consideration. As the issue was not being finally decided, Sharma Nand Prasad again moved this Court in C.W.J.C. No. 5390 of 2007. During the pendency of the writ petition, the case of the writ petitioner was considered by the District Appointment Committee on 29.12.2009 and his case was rejected. By order dated 12.12.2011 in C.W.J.C. No. 5390 of 2007, such proceeding was quashed with a direction to the District Appointment Committee to reconsider the case of the writ petitioner in light of the undertaking given on the earlier occasion. Pursuant to the said direction, a fresh panel of 20 persons was prepared on 10.02.2012 in which the name of Sharma Nand Prasad and the writ petitioners was included. C.W.J.C. No. 5390 of 2007 was finally disposed off on 16.03.2012 after the Chief Engineer brought on record the appointment letter dated 15.03.2012 issued in favour of Sharma Nand Prasad. The

writ petitioners not having been appointed, led to filing of the writ petitions which have been allowed by the learned Single Bench by order dated 29.07.2013 which is impugned in the present appeals.

Learned counsel for the appellants submits that the order passed by the learned Single Judge is based solely on the ground that Sharma Nand Prasad, who is said to be similarly situated, has been appointed and thus, the writ petitioners cannot be discriminated against. It is submitted that such contention is erroneous for the reason that there cannot be parity with regard to any action taken which is contrary to law. Learned counsel submits that on facts also, the writ petitioners were engaged as daily wagers between the years 1980-85 due to exigency of work and later on the Department did not retain them in service as there was no requirement and such engagement was also terminable at any point of time, without notice. It is submitted that such temporary engagement does not confer any legal right for absorption/regularization of the services. Learned counsel submits that the writ petitioners having been appointed on daily wages, without following any procedure for appointment, particularly, in absence of Advertisement, any roster clearance by the Competent Authority and not against sanctioned post, itself was wholly illegal. It is submitted that the writ petitioners not having been engaged after 1985, the recommendation made by the District Level Committee for their



regularization/absorption in its meeting dated 14.02.2012 is bad in law. It is submitted that the said recommendation was due to various interim orders being passed by the learned Single Judge in the case of Sharma Nand Prasad (C.W.J.C. No. 5292 of 2004). Learned counsel submits that even in the said case, the Executive Engineer who had taken the stand before the Court that the case of Sharma Nand Prasad was under active consideration, was not authorized by the higher authorities to give such statement as it is the concerned Chief Engineer who is the appointing authority of Class-IV employee and when Sharma Nand Prasad again moved this Court in C.W.J.C. No. 5390 of 2007 for the same relief, the District Level Selection Committee rejected the claim on 29.12.2009 and only due to the quashing of the same by order dated 12.12.2011 in C.W.J.C. No. 5390 of 2007, the concerned District Level Selection Committee had recommended the name of Sharma Nand Prasad in its proceeding dated 10.10.2012 and 13 others which was followed by appointment letter being issued in favour of Sharma Nand Prasad and, thus, the case of Sharma Nand Prasad resulted in appointment only due to the intervention of the Court as otherwise he was also not fit to be considered in law. Learned counsel submits that after the order of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors.** reported as **(2006) 4 SCC 1** dated 10.04.2006, such illegal appointments cannot be



regularized or absorbed. It is submitted that after the said date even orders issued earlier by the Courts contrary to the law settled in the case of **Uma Devi** (supra) stood denuded of their force and, thus, to such extent, even the earlier direction of the Hon'ble Supreme Court dated 30.10.2000 in S.L.P.(C) No. 1815 of 1989 to consider regularization of daily wage workers could not have been enforced. Learned counsel submits that the writ petitioners cannot move the Court so late in the year 2012/13 for seeking relief based on the engagement which admittedly came to an end in the year 1985.

Learned counsel for the writ petitioners submits that the learned Single Judge has rightly considered the service of Sharma Nand Prasad, a similarly situated person being regularized as there could not be discrimination by the State in such matters. However, he is not in a position to controvert the contentions of learned counsel for the appellants with regard to law settled by the Hon'ble Supreme Court in the case of **Uma Devi** (Supra) and also that plea of discrimination cannot be raised seeking parity with action taken in contravention of the legal provisions.

Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellants. The writ petitioners having worked intermittently during the period 1980-85 cannot have any legal right to claim regularization/absorption of their



services. The undisputed position is that even such engagement of the writ petitioners as daily wagers was without following any procedure prescribed in law much less through open advertisement. The Hon'ble Supreme Court in the case of **Union of India v. Pradeep Kumar Saxena** reported as **1995 Supp (4) SCC 69**, has held that a daily wager holds no post and therefore the question of his regularization does not arise. Despite this, in view of various orders having been passed by the Courts for regularization, the matter was finally settled by the Constitution Bench of the Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi (3)** reported as **(2006) 4 SCC 1**, in which at paragraph-43 it has been held that daily wagers, contractual appointees and casual labourers do not hold a post and therefore have no claim for regularization. However, directions were issued for regularization of such persons in terms of the observations contained in paragraph-53 of the said judgment as a one time measure for those who may have completed ten years in that capacity. The Hon'ble Supreme Court clarified and reiterated the position in the case of **State of Karnataka vs. Ganpathi Chaya Nayak** reported as **(2010) 3 SCC 115** and **Satya Prakash vs. State of Bihar** reported as **(2010) 4 SCC 179**, that daily wagers were not entitled for consideration under paragraph-53 of the judgment in **Uma Devi** (supra).

In the case of **Satya Prakash** (supra), the appellant who



had worked for more than 10 years on daily-rated basis in the Bihar Intermediate Education Council had approached this Court for regularization of his service and a learned Single Bench of this Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. In the appeal preferred before the Division Bench, it was held that merely because they had worked as daily wage employees with the Council would not confer any right for regularization as no public appointment was permissible dehors the recruitment rules. The Letters Patent Appeal was, therefore, dismissed in limine. Aggrieved by the same, the appeal was referred before the Supreme Court and after considering the Constitution Bench judgment in the case of **Uma Devi (3)** (supra), it was held at paragraph-12 to the following effect:

“12.The Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily wagers and those who were appointed irregularly in the sense that there was non-compliance with some procedure in the selection process which did not go to the root of the selection process. The appellants in our view will not fall in the category of the employees mentioned in para 53 read with paras 15 and 16 of the Constitution Bench judgment.”

The policy decision of the State Government which was sought to be relied upon for regularization of those who may have completed 240 days in service has been considered by the Hon'ble

Supreme Court in the case of **M.P. Housing Board v. Manoj Shrivastava** reported as **(2006) 2 SCC 702**, where at paragraph no. 17 it has been held to the following effect:

“17. It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. (See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra; Executive Engineer, ZP Engineering Divn v. Digambara Rao; Dhampur Sugar Mills Ltd. v. Bhola Singh; Manager, Reserve Bank of India v. S. Mani and Neeraj Awasthi.)”

Further, a similar circular of the year 1993 of the Department of Railways was considered by the Hon'ble Supreme Court in the case of **Pinaki Chatterjee v. Union of India** reported as **(2009) 5 SCC 193**, where at paragraphs-13 and 14, quoted hereinbelow, it has been held that such an outdated Circular contrary to the mandate of Article-14 of the Constitution moreso after the judgment of **Uma Devi** (supra) cannot be a cause of action to seek a mandamus.

“13. The said circular letter of the Railway Board which had been issued long back, however, did not take into consideration the limitation of power of a State to make appointments in total disregard of mandatory provisions of the recruitment rules and/ or the constitutional provision. This aspect of the matter has been considered in A. Umarani v. Coop. Societies holding: (SCC p. 126, para 45)

“45. No regularization is, thus, permissible in exercise of the statutory (sic executive) power conferred under Article 162 of the Constitution if the appointments have been

made in contravention of the statutory rules.”

14. Yet again a Constitution Bench of this Court in State of Karnataka v. Umadevi (3) laid down the law in the following terms: (SCC p.36, para 43)

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue

directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.”

The similarity being drawn by the writ petitioners in the case of Sharma Nand Prasad also is of no help to them for no law has been decided in the case and only on the ground that in the earlier round of litigation, the stand taken on behalf of the State was that the matter was under active consideration, the said person was finally appointed. The law on the point is also clearly in favour of the appellants as has been laid down by the Hon'ble Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society** reported as **(2013) 5 SCC 427**, where at paragraph-34 it has been held as under:

“34 Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law.

“13.....‘The statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do. ...’

Even an offer or concession made by the public authority can always be withdrawn in public

interest.[Vide State of Madras v. K. M. Rajagopalan, Badri Prasad v. Nagarmal and H.S. Rikhy v. New Delhi Municipal Committee (AIR p. 562, para 13)]. In Surajmull Nagoremull v. Triton Insurance Co. Ltd., it was held as under : (IA pp. 128-29)

“.....No court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset....”

A similar view was reiterated by the Privy Council in Shiba Prasad Singh v. Srish Chandra Nandi.”

Further, the Hon’ble Supreme Court in the case of **Union of India v. Godfrey Philips India Ltd.** reported as **(1985) 4 SCC 369**, has ruled that promissory estoppel cannot be used to compel the government or a public authority to carry out a representation or promise which is contrary to law, or which is outside the authority, or power of the government, or of the concerned officer, or public authority to make such promise. Similarly, it has also been held by the Hon’ble Supreme Court that the Government cannot be held bound by any act of its officer or agent which may be beyond the scope of his authority in the case of **Dr. Kohli v. Atul Products Ltd.** reported as **(1985) 2 SCC 77** and in the case of **Indian Express Newspapers Pvt. Ltd. v. Union of India** reported as **(1985) 1 SCC 641**, it has been held that an unauthorized promise does not create an estoppel. When a



government official in making a promise or giving an assurance acts outside the scope of his authority or power, the plea of promissory estoppel is not available. The government cannot be held bound by the unauthorized acts of its officers. Government or any public authority cannot be compelled to carry out a representation or promise which falls outside its powers, or is contrary to law.

Similarly, a Division Bench of this Court in the case of **Raghunath Lohra vs. State of Bihar** reported as **2013(3) PLJR 685**, the Court at paragraph-8 has finally held as under:

*“8. In view of law settled by the Apex Court in the case of **Uma Devi** (supra) and subsequently in large number of cases including in the case of **Daya Lal** (supra), we hold that daily wage employees cannot be considered for regularization. We find no merit in this writ petition. Accordingly it is dismissed.....”*

The Hon’ble Supreme Court in the case of **State of U.P. vs. Ajay Kumar** reported as **(1997) 4 SCC 88**, has held that the status of a daily wage not holding a post is ineligible to be considered for regularization in the following terms:

“3..... Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then.....”

In the present case the admitted position being that the writ petitioners, who may have been appointed, but only intermittently, and on daily wages and that too only between the period 1980-85, clearly shows that even the nature of the job was not permanent and most importantly, they have never agitated with regard to their disengagement or had taken the plea that the job they were performing was of a regular nature or against any permanent post.

For the reasons aforesaid, we are unable to uphold the order passed by the learned Single Bench dated 29.07.2013. Accordingly, the Letters Patent Appeals stand allowed and the order passed by the learned Single Judge dated 29.03.2013 in C.W.J.C. No. 2801 of 2013 and C.W.J.C. No. 18293 of 2012 is set aside. Consequently, the writ petitions also stand dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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