

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 129 of 2011
IN
Civil Writ Jurisdiction Case No 963 of 2010

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1. The State Of Bihar
 2. The Secretary Department of Personal and Administrative Reforms Govt. Of Bihar, Patna.
 3. The Principal Secretary cum Commissioner, Department Of Social Welfare, Govt. Of Bihar, Patna.
 4. Director, Integrated Child Development Scheme (I.C.D.S.), Govt. Of Bihar, Patna.

.... Appellant/s

Versus

1. Uttam Kumar, son of Sri Narayan Lal, Resident of Village + P.S. Khusrupur Krishna, Dist. Patna.
2. Rajesh Kumar, son of Sri Jairam Sharma, Resident of Village + P.O. Maniawan, P.S. Kasisrai, Dist. Jahanabad.
3. Manoj Kumar Gupta, son of Late Birendra Prasad, Resident of Devi Sthan, Bihar Road, P.O. + P.S. Hilsa, Dist. Nalanda.
4. Prem Prakash Kesri, son of Sri Bhola Prasad Kesri, Resident of M.N. Das Lane Jogsar, P.S. Kotwali, Dist. Bhagalpur.
5. Shashi Bhushan Sahay, son of Sri Surya Narayan Sahay, Resident of Ambika Nagar, P.S. Banjana, Dist. Motihari.
6. Dharendra Kumar Jha, son of Late Kamla Kant Jha, Resident of Kahara, P.S. Saharsha, Dist. Saharsha.
7. Binod Kumar Singh, son of Sri Brahma Singh, Resident of Village Baruna, P.O. Mahima, P.S. Bhabhua, Dist. Kaimur.
8. Shankar Prasad Singh, son of Sri Ganpati Singh, Resident of Village Akbarpur, P.S. Bhawanipur, Dist. Purnia.
9. Bihar Public Service Commission through Its Chairman, Patna.
10. Chairman, Bihar Public Service Commission, Patna.
11. Secretary, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s :	Mr Nadim Seraj, GP V with Mr Dharendra Kumar, AC to GP V
For the Respondent/s :	Mr Awadhesh Kumar Pandit, Advocate
For the B P S C :	M/s Kumar Brajendra Nath & Subodh Chandra Jha, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-09-2016

We have heard the parties.

2 The present intra-Court appeal has been preferred by the State against the decision of the learned Single Judge dated 22.02.2010 passed in *CWJC No 963 of 2010* (Uttam Kumar –Versus- State of Bihar & Others) and analogous case. The writ petition was allowed by the learned Single Judge following the judgment passed by another Single Bench presided by the same learned Judge being *CWJC No 128 of 2008* (Raj Mohan Sah & Another –Versus- State of Bihar & Others). In the case of *Raj Mohan Sah (supra)*, which was also a case of the same cadre, the learned Single Judge held that those writ petitioners were recruited through Bihar Public Service Commission (for brevity *BPSC*) after undergoing complete selection process pursuant to Third Graduate Combined Entrance Examination (Advertisement No 1 of 1990). Those appointments were made in the year, 2004. The learned Single Judge has noticed that though the posts were permanent posts with perennial requirement, they were appointed as Statistical Assistant but on contractual basis. This was



so because, as a matter of fact, it was found that notwithstanding the posts being permanent with perennial requirement, requisition was made for contractual appointments. The learned Single Judge, accordingly, held that the appointments would be deemed to be permanent appointments made in regular post with effect from the date they were appointed on contract. Following this decision in the case of *Raj Mohan Sah (supra)*, the writ petition filed by the present writ petitioners/respondents was allowed. Let it be noted that in this case, initially as per Advertisement No 1 of 1990, there was a requisition for 75 candidates out of which in fact only 37 were appointed and that too on 08.11.2004. For the remaining posts, there was again a requisition but this time the requisition was made in the year, 2006 and ultimately the appointments were made in the year, 2009 which included these petitioners/respondents and initially this was again on contract basis which, as per judgment of learned Single Judge, ought to be treated as a permanent appointment.

3 State, being aggrieved, filed this intra-Court appeal. State pointed out that against the judgment of the learned Single Judge, in the case of *Raj Mohan Sah (supra)*, it had preferred an appeal that is, *LPA No 630 of 2010* and *LPA No 1469 of 2010* which were both allowed on 19.07.2011 upsetting the judgment of the learned Single Judge, thus, reversing the judgment of the learned Single Judge in *Raj Mohan Sah's case*. State pleads that following

the said Division Bench, we must also allow this Letters Patent Appeal and take away the benefit of being made regular employee to the writ petitioners/respondents.

4 We have examined the judgment in the case of Division Bench of this Court in *LPA No 630 of 2010* (State of Bihar & Others –Versus- Raj Mohan Sah & Others) and analogous appeal. In our view, the said judgment of Division Bench would support the writ petitioners rather than the State-appellant though technically it has overruled the learned Single Judge and reversed the benefit given by the learned Single Judge. The said judgment itself points out that if the writ petitioners were to be treated by the State to be appointed on permanent post then the judgment of the learned Single Judge would operate, meaning thereby their selection, though being on contractual basis, their appointments would be deemed to be on regular permanent basis. Therefore, in principle, what the Division Bench said was that if the decision was for permanent regular appointments, then though they were shown to be contractual appointees, they would be treated as regular permanent appointees. But if the posts were for contractual appointees only, the post being temporary, they could not be permanent employees on temporary post. Both the propositions, to us, appear to be correct and, therefore, what would be relevant is to see which of the two consequences applied to the facts of the present case. We need not go far, for a supplementary counter affidavit has

been filed by the respondents in the appeal that is the writ petitioners bringing on record the Resolution of the State Government (Annexure A) dated 10.02.2015 circulated under Memo No 715 dated 12.02.2015 whereby it has accepted the position that the posts were permanent posts and wrongly requisitions were made for contractual appointees on the said post. Accordingly, the State has resolved to treat all such contractual appointees like the writ petitioners/respondents as permanent appointees after due selection by the BPSC from the date they were initially appointed. State does not contest this position. The result would be that out of the two cases, as shown by the Division Bench earlier, the State now having treated the post to be permanent and the appointments also to be permanent appointments, the second course would apply and, accordingly, the judgment of the learned Single Judge would consequently hold the field. Thus, in substance, the appeal technically by the State would not be entertained and the judgment of the learned Single Judge has to be upheld.

5 Consequently, the appeal preferred by the State, would stand dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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