

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 999 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 23865 of 2012

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Harilal Choudhary S/o- Shri Jawahar Choudhary, resident of village + P.O.-
Sabreji, P.S.- Mirganj, District- Gopalganj.

....Petitioner/s / Appellant/s

Versus

1. The State of Bihar.
2. The District Magistrate, Siwan.
3. The District Level Selection Committee, Siwan, represented through the District Magistrate, Siwan.
4. The Civil Surgeon-cum-Chief Medical Officer, Siwan.

....Respondent/s / Respondent/s

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Appearance :

For the Appellant/s : Mr. Prakash Srivastava, Advocate.
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: 26-10-2016

Heard learned counsel for the parties.

2. The challenge in the present intra-Court appeal is to the order dated 31.03.2014 by which C.W.J.C. No. 23865 of 2012 filed by the appellant has been dismissed.

3. The appellant was appointed on daily wages as Typist-cum-Assistant by the order of the District Magistrate, Siwan dated 23.12.1991. The District Magistrate, Siwan wrote to the Government on 25.06.1996 seeking permission to regularize his services on the post of Clerk. When no progress was made, the appellant moved this Court in C.W.J.C. No. 2457 of 2000 which was



disposed off by order dated 24.02.2005, with a direction to the Commissioner, Siwan Division, Chapra to complete the exercise of making appointment after advertising the post and holding examination for the available vacant and sanctioned post. The District Magistrate, Siwan in terms of the order of this Court, sent requisition to the Bihar Staff Selection Commission for filling up of 8 posts of Clerk under letter no. 54 dated 11.04.2006. While the matter was pending, a draft panel of Class-IV employee was prepared for the post of Siwan and notified on 02.02.2008 in which the name of the appellant was at serial No. 74 as per the panel of 2004 and his seniority was at serial No. 29. Objections were also called to be submitted by 18.02.2008. The appellant was recommended for appointment under the Civil Surgeon, Siwan on a Class-IV post in the Backward category. The appellant was appointed by order dated 17.08.2011 of the Civil Surgeon-cum-Chief Medical Officer, Siwan on Class-IV. The appellant joined on the post on which he was appointed. Still, he preferred C.W.J.C. No. 23865 of 2012 challenging the said resolution of the District Level Selection Committee dated 05.02.2011 recommending his appointment on Class-IV post. The writ petition being dismissed by the learned Single Bench by order dated 31.03.2014 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the



authorities were required to consider his case for regularization as he was appointed on a Class-III post in the year 1991 and continued to work on the same and for which recommendation had also been made by the District Magistrate, Siwan. It was further submitted that the said period of more than 19 years ought to be considered for the purposes of grant of promotional benefits/A.C.P., which has not been done.

5. Learned counsel for the respondents submitted that the claim of the appellant is unsustainable as admittedly he was appointed only on daily wages and cannot claim regularization in view of the settled law. It was submitted that the appellant having joined on Class-IV post pursuant to recommendation of the District Level Selection Committee without any objection, cannot be permitted to now claim appointment on Class-III post.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant having been directly appointed on daily wages without following any procedure prescribed for such engagement was itself in complete violation of the mandate of Articles 14 and 16 of the Constitution of India. In fact, the appellant by virtue of him having worked as a daily wager was selected for regular appointment on a Class-IV post, which was the maximum benefit, he could have derived in law. Thus, the said period has been instrumental in resulting in the appellant being appointed on



a permanent basis. Further, the age of the appellant which was beyond the prescribed limit for such appointment was relaxed in view of the earlier order of the Court dated 24.02.2005 in C.W.J.C. No. 2457 of 2000. At this stage, it would be relevant to refer to the judgment of the Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013(1) PLJR 964**, which after considering the various decisions of the Hon’ble Supreme Court including that in the cases of **State of Karnataka vs. Uma Devi (3)** reported as **(2006) 4 SCC 1** and **State of Karnataka vs. M. L. Kesari** reported as **(2010) 9 SCC 247**, has clearly 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.

7. Having regard to the aforesaid, we do not find any error in the action of the authorities or the learned Single Bench warranting interference in the matter and, accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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