

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1681 of 2016
IN
Civil Writ Jurisdiction Case No. 9604 of 2013**

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Rajiv Kumar, Son of Prmod Singh,. Resident of lai PS. Kajra. Distt. Lakhisarai

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary. Energy Deptt. Bihar Patna
2. The Director Renewable Energy Development agency. Third Floor Sone Bhawan Beer Chand Patel Marg . Patna
3. The Dy. Director. Bihar Renewable Energy Development Agency. Third Floor Sone Bhawan Beer Chand Patel Marg . Patna
4. The Project Director . Bihar Renewable Energy Development agency. Third Floor Sone Bhawan Beer Chand Patel Marg . Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Prakash Singh

For the Respondent/s : Mr. Md.Nashrul Hoda Khan, SC1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-09-2017

IA No. 6885 of 2016 has been filed seeking condonation of delay of 2 years and 132 days in filing the present appeal. Keeping in view the reasons indicated in the application the delay is condoned.

Seeking exception to an order dated 13.03.2014 passed by the learned Writ Court in CWJC No. 9604 of 2013 this appeal has been filed under Clause 10 of the Letters Patent.

The petitioner was appointed as an Ad hoc Daily Wage Employee by the Bihar Renewable Energy Development



Agency (in short, BREDA) and his services were terminated on 31.01.2013. The grievance raised in the writ petition was that the petitioner was appointed by the Director, BREDA and his termination by a subordinate officer, namely, Deputy Director, is unsustainable. It was further stated that when many other employees identically situated have been taken back for duty the petitioner's case should also be considered. The learned Writ Court examined the matter and found that the services of the petitioner were terminated on the basis of the order passed by the Director. It was only communicated to the petitioner by the Deputy Director and, therefore, the contention of the petitioner that his services were terminated by a subordinate officer was rejected. We find no error in the aforesaid order warranting reconsideration.

As far as the contention of the petitioner for reinstatement and re-engagement is concerned, the Writ Court found that the petitioner's appointment was not approved by the Managing Committee. He was appointed as Bio Gas Technician even though he did not have the minimum qualification for the post. That apart, his appointment was not preceded by any advertisement or selection process but the advertisement was dehors the rules and, therefore, no indulgence was made by the learned Writ Court. Even it seems that the petitioner is unable to



demonstrate as to how he was appointed to the post in question. The petitioner has not indicated as what was the procedure followed for his appointment. The Hon’ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]** has held that only those appointments can be regularized which fall in the category of irregular appointment but if an appointment is illegal appointment, the same cannot be regularized.

In the case of present petitioner, we find that it is a case of illegal appointment and, therefore, the learned Writ Court has rejected the prayer on such consideration. We see no reason to make any indulgence into the matter.

The appeal is accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl.

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