

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1719 of 2016
IN
Civil Writ Jurisdiction Case No. 326 of 2013

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Awadhesh Kumar Singh, Son of Shri Radha Krishna Singh, resident of Majhouni,
P.S. Rajaun, District Bhagalpur.Appellant

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
 2. Secretary, Building Construction and Housing Department, Government of Bihar, New Secretariat, Patna.
 3. Superintending Engineer, Building Constriction and Housing Department, South Bihar Circle, Punaichak, Government of Bihar, Patna.
 4. Engineer-in-Chief, Building Construction and Housing Department, Government of Bihar, New Secretariat, Patna.
 5. Executive Engineer, Building Construction and Housing Department, Patna Division, Patna.Respondents
- =====

Appearance :

For the Appellant : Mr. Dr. Pankaj, Advocate.
For the Respondents : Mr. Arvind Ujjwal, S.C. 4.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 16-05-2017

Seeking exception to an order dated 02.08.2016, passed by
learned Writ Court in C.W.J.C. No. 326 of 2013, this appeal has been
filed under Clause 10 of the Letters Patent.

The petitioner was working in the respondents' Department
and he claimed his regularization in service. The matter was taken up
on various occasions and finally vide Annexure-1 dated 09.05.2002,
his application for regularization was rejected. Challenging the same,
the writ petition was filed and even though the learned Writ Court
without going into the merit of the case, dismissed the writ petition by
holding that earlier the petition filed by the petitioner was dismissed
as withdrawn with liberty to approach the Department.



We have considered the question on merit and on going through the reason giving rise to the claim of the petitioner for regularization, we find that the reason was that the petitioner does not fulfil the criteria for regularization as laid down not only by this Court but also by the Supreme Court in the case of the **Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors., 2006(4) SCC, 1.** Once the petitioner's appointment falls in the category of an illegal appointment, that cannot be regularized under the law and, therefore, on consideration, the representation was rejected in view of the requirement of law, we see no reason to make any indulgence in the matter.

Learned counsel for the petitioner submits that vide Annexure-11, various persons identically situated have been regularized. The question of regularization of the petitioner has been denied as the petitioner cannot be regularized as per the principle laid down by the Supreme Court as indicated hereinabove. Merely because the benefit has been granted to certain other persons, may be in an illegal manner, parity cannot be claimed by the petitioner. An illegality cannot be perpetuated, negative equality is not applicable under Article 14 of the Constitution and the petitioner cannot be granted parity in such cases as laid down by the Supreme Court in the case of **Videsh Sanchar Nigam Ltd. & Anr. Vs. Ajit Kumar Kar & Ors. AIR 2009 SC 34** and **Fuljit Kaur Vs. State of Punjab & Ors. AIR 2010 SC 1937.** It has been held by the Supreme Court that



in all other cases merely because, despite illegality if, benefit has been granted to certain other persons, illegality cannot be perpetuated. Therefore, we are of the considered view that as the petitioner was illegally appointed and he is claiming his regularization on account of the fact that the certain illegal appointees have been regularized, we cannot accede to the stand of the petitioner. The petitioner may have liberty to challenge the illegality made by the Department before the competent authority of the Department, but an illegal benefit granted cannot be ground to claim parity with those employees. We see no reason to make any indulgence in the matter.

The appeal stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	N/A
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