

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.575 of 2016
IN
Civil Writ Jurisdiction Case No. 1810 of 2015**

- =====
1. Prem Kumar Sinha, Son of Late Raj Kishore Prasad, Resident of Village- Dariyapur, P.O. + P.S.- Mittanchak, Parsa Bazar, District- Patna, Pin - 804453.
 2. Umesh Singh, Son of Late Ram Pravesh Singh, Resident of Village:- Fatehpur, P.S.- Didarganj, District- Patna.
 3. Jayanandan Singh, Son of Shri Chamari Singh, Resident of Village- Allawalpur, P.S. Gaurichak, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Executive Engineer, Flood Control Division, Samastipur, District- Samastipur.
4. The Chief Engineer, Water Resources Department, Samastipur, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi, Advocate
For the Respondent/s : Mr. Anant Pd. Singh, SC-15
Mr. Avinash Kumar, AC to SC-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-07-2017

Seeking exception to an order dated 18.2.2016
passed by the learned Writ Court in C.W.J.C. No.1810 of 2015, this
appeal has been filed under Clause 10 of the Letters Patent.

Inter alia contending that the claim of the petitioners
for regularization has not been properly considered and they have
not been granted regularization in accordance with the policy of the



State Government as contained in the Constitution Bench judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka vs. Uma Devi & Ors., (2006) 4 SCC 1, the writ petition was filed. The learned Writ Court found that the petitioners' case was also considered by a three member committee. It was rejected by the Committee and, therefore, no case for further consideration is made out.

When the matter was being heard by this Bench on 24.3.2017, it was found that before the report of three member committee in an earlier writ petition i.e. C.W.J.C. No.17673 of 2009 on 10.12.2002 the Chief Engineer was directed to consider the case of the petitioners as per resolution No.639 dated 16.3.2006 and as materials were not available to indicate as to how the matter was considered, the respondents were directed to file supplementary counter affidavit. Two supplementary counter affidavits have been filed by the respondents and a perusal of these supplementary counter affidavits goes to show that the petitioners were granted opportunity to appear before the three member committee for which notices were issued to them, but they failed to appear before the three member committee. It is indicated that the Committee gave its recommendation wherein it was found that the petitioners were not engaged against the sanctioned vacant posts. Their induction was



contrary to the law laid down in the case of Uma Devi (supra) and therefore rejected the representation.

Once that is the position as is evident from the report of the three member committee, no indulgence into the matter is called for. However, to verify the action taken and in view of the above mentioned submission made by the learned counsel for the petitioner, we posed a question to the counsel for the petitioner and asked him to indicate to us as to by following which process known to law the petitioners were inducted in the Department as a daily wage employees. Learned counsel for the petitioners was unable to tell us that about the procedure was followed for induction of the petitioners as a daily wage employees at the initial time of appointment. There is no assertion made by the petitioners anywhere i.e. in the writ petition or in this appeal to indicate as to how they were born in the Department initially as a daily wage employees, so that it can be considered as to whether the appointment falls in the category of “illegal appointment” or “irregular appointment”. On the contrary, repeated questions being asked by this Court did not result in any reply being submitted by the petitioners to show as to what process was followed in the initial stage when they were inducted as daily wage employees. It seems that the petitioners were appointed as a daily wage employees



without following any process known to law and it is only after evaluating all these aspects of the matter that three member committee came to the conclusion that the petitioners are unfit for being regularized.

In our considered view, there being no evidence or material to show that the petitioners’ appointment or induction in the Department falls in the category of irregular appointment which can be regularized by virtue of the law laid down in the case of Uma Devi (supra), we see no reason to make any indulgence in the matter as the very induction of the petitioners into public service, even as a daily wage employees, prima facie, is found to be by following a totally illegal procedure, not known to law which cannot be approved by this Court in the backdrop of the judgment of the Constitution Bench in the case of Uma Devi (supra).

The application is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

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