

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.493 of 2014
IN
Civil Writ Jurisdiction Case No. 4617 of 2006**

- =====
1. Binay Kumar Son Of Late Ram Bhajan Prasad Resident Of Village- Raipura, P.S- Fatuha, District- Patna.
 2. Kumar Rajesh Ravi Son Of Late Suresh Mandal Resident Of Village- Jaikhuth, P.S- Gauradih, District- Bhagalpur.
 3. Sahi Shanker Singh Son Of Sri Sikander Singh Resident Of Village- Baijnathpur, P.S- Sanokhar, District- Bhagalpur.
 4. Surendra Kumar Singh Son Of Sri Mathura Singh Resident Of Village- Hisua Head Panchu Babhan Toli, P.S- Hisua, District- Nawada.
 5. Pintu Kumar Choudhary Son Of Sri Anant Kumar Resident Of Village+ P.S- Isakchak Ishwar Nagar, Shayamaldas Lane, District- Bhagalpur.
 6. Harendra Prasad Son Of Sri Chaturgun Prasad Resident Of Village Dumarhar Bujurg, P.S- Darauli, District- Siwan.
 7. Dinesh Paswan Son Of Sri Ramdeo Paswan Resident Of Village- Paithna, P.S- Bena, District- Nalanda.
 8. Smt. Sharda Kumari Wife Of Sri Upendra Sharma Resident Of Village Thana Bigha, P.S- Ghoshi, District- Jehanabad.
 9. Sunil Kumar Choudhary Son Of Sri Hari Nandan Choudhary Resident Of In The House Of Sri Lahtan Choudhary, 113 Vidhyak Colony, Kautilya Nagar, B.M.P. Road, Raza Bazar, P.S- Shastri Nagar, District- Patna.
 10. Arun Kumar Yadav Son Of Sri Sheo Lochan Yadav Resident Of Village Faujdari, P.S- Pirpainti, District- Bhagalpur.
 11. Vinay Kumar Son Of Sri Rajendra Prasad Singh Resident Of Village Saidpur, P.S- Dariapur, District- Saran At Chapra , C/O Md. Habib, Ashok Hair Cutting Saloon, New Market, Patna, P.S- Kotwali, District- Patna.
 12. Pankaj Mandal Son Of Sri Sheo Narayan Mandal Resident Of Village Srichak, P.S- Sanhaura, District- Bhagalpur.

.... Appellants

Versus

1. The Bihar Legislative Assembly through the Deputy Secretary, Patna.
2. The Secretary, Bihar Legislative Assembly, Patna.
3. The Under Secretary, Bihar Legislative Assembly, Patna.
4. The Deputy Secretary, Bihar Legislative Assembly, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Bishnu Kant Dubey, Advocate
For the Respondents : Mr. P.K.Shahi, Senior Advocate
Mr. Kaushal Kumar Singh, Advocate
Mr. Niraj Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 01-05-2017



Heard learned counsel for the appellants and learned senior counsel for the Bihar Legislative Assembly.

The writ application was filed by these appellants because the Legislative Assembly refused to continue with the hiring or engagement of these appellants beyond 28.02.2006. They were hired in the very first place for a limited period on 27.06.2005 and the engagement was not extended beyond 28.02.2006. In other words, their hiring came to an end within eight months.

The learned single Judge heard the parties rather extensively and taking note of the manner and narration of the engagement as well as the object that the engagement was for very very limited period, opined that no appointment on a temporary basis can continue beyond one year without fresh advertisement and selection. Not only this the learned single Judge refused to give any relief to these appellants, but also gave a direction for taking steps for regular appointment, cutting out the gross arbitrariness and ad-hocism, which was noticed in the manner of such engagement.

The Court notices the very opening sentence of the learned single Judge : *“This case depicts an extremely sorry state of affairs and the spoil system that pervades even the Office of the Vidhan Sabha of the State.”* These are very loaded observations to make by



the learned single Judge and he was correct in making such an observation and the reasons thereof emerge from the narration of facts. There has been complete disregard to the statutory rules, which are in place for such appointments and engagement, one of them being the Bihar Legislative Assembly Secretariat (Appointment and Service Condition) Rules, 1964.

The Court is tempted to reproduce some of the observations which the learned single Judge has had to make emerging from the pleadings of the parties :

The relief claimed by the petitioners is that they should be allowed to continue to work as others have been allowed to work on similar posts. In other words, what the petitioners had prayed, as noticed earlier, from this panel two sets of appointments had earlier been made. The first in the year 2003 itself, which were though said to be temporary were not limited in time. The second lot which was limited in time. All of them were allowed to continue by letters of extension from time to time. Petitioners also want that they should also continue in this ad hoc fashion, though their very appointment had been sanctioned by the Secretariat of the Assembly to a fixed period terminating to 28.02.2006.

In the counter affidavit filed by the Assembly first a stand had been taken which was deplorable. It is stated that on the eve of the resignation of the



Speaker, the Speaker made these appointments. Having made the appointments, on the next day he tendered resignation and the Assembly was suspended with imposition of President Rule. It is unfortunate. From the ordersheet appended to the said counter affidavit, it is evident that it was long before that the office itself had recommended that the life of the panel be extended and the vacancies that have accrued be filled up from the said panel to save time. This traveled from level to level with an alternative suggestion for making alternative arrangement from recruitment process. Thus, it was not the Speaker which was pushing the matter on the eve of his resignation. The selection from the panel was also done long before.

When this Court confronted with the deponent of the counter affidavit, who has since retired, he expressed his apology in the matter and stated that the Speaker chose to make these ad hoc appointments as against the suggested alternative. There was also suggestion to make permanent appointments after fresh advertisement. He did not mean any disrespect to the Speaker. Be that as it may, what the counter affidavit and the supplementary counter affidavit filed by the Assembly states is that pursuant to advertisement issued in the year 2001 a panel was made for appointment in the year 2003. The advertisement



did not disclose the number of vacancies. It did not disclose whether the vacancies were as against permanent posts or posts that were temporary, as would be the case in respect of posts in Schedule-1 or Schedule-2 of Rule-3 of the Recruitment Rules. The fact remains that certain appointments were made from the panel. The panel, in fact and in law, would then stand lapsed and expired. Notwithstanding that again the life of the panel is then extended and further appointments are made. These two appointments led to another round of litigation before this Court. Suffice to say that this Court by judgment of Division Bench in the case of the Speaker, Bihar Legislative Assembly, Patna and others Vs. Sanjay Kumar Singh and others, being L.P.A. No.322 of 2008 and analogous cases disposed of on 15th of September, 2011 held that considering the fact that the parties had been in service for over six years and the other lot about five year they all should be continued and steps for their regularization taken according to their seniority. It may be noted that the Speaker appealed to the Apex Court without success. Learned counsel for the petitioner virtually seeks the same direction.

Having heard the parties and considered the matter, I am unable to accede to the prayer of the learned counsel for the petitioners.



The reasons are simple. This spoil system and ad hocism must come to an end. These steps are retrograded and antithesis of Article-14 of the Constitution. If there are vacancies permanent or temporary, they are required to be filled up in accordance with law. The law enshrines public advertisement so that public at large has notice thereof and has a chance to seek employment under the State. These are backdoor entry methods which are being adopted. Once these chosen few enter service then their continuous extension mature into regularization and ultimately into permanent service. This cannot be permitted. As noted above, in terms of Rule-3 of the Rules aforesaid there are three types of posts. Firstly there is sanctioned permanent post. The Court sees no reason why permanent appointments cannot be made on these posts instead of making temporary appointments, time bound appointments and extending them from time to time. There has to be proper advertisement, selection and then followed by permanent appointment to end this ad hocism. Secondly there is Schedule-2 posts, which are temporary or temporarily sanctioned and thirdly there are posts which the Speaker can create only for a particular financial year which would lapse with the financial year. Even in respect of these if there is perennial requirement these posts must be



taken out of the Schedule-2 and placed in Schedule-1 posts and made permanent. The temporary posts should be minimal. While making appointments, it must be clearly ascribed as to against what category of which posts is the appointment being made so that there is no confusion whether these appointments are against temporary, permanent or ad hoc post created for the financial year for some reason. This is never done and a chaos prevails. For whose benefit this Court cannot venture to say.”

The observations of the learned single Judge quoted above does not leave much for this Court to add or opine over and above the findings which formed the basis for dismissal of the writ application.

A desperate effort is now sought to be made on behalf of the learned counsel for the appellants that uniform yardstick has not been followed and considered by the learned single Judge because people who were engaged on the basis of 2001 advertisement and hired in the year 2003 have been allowed to continue, whereas these appellants, who were also engaged with regard to the same advertisement and panel, are being discriminated. With regard to the previous appointments Hon’ble Supreme Court came to their rescue.



There cannot be parity or equality in violation of Articles 14 and 16 of the Constitution of India. This Court fails to understand the logic as to how a panel prepared on the basis of 2001 advertisement could be revived and extended in the year 2005 that too on the last working day of the outgoing Speaker and for whose benefit. This Court has not heard of instances of such kind where a panel is revived after the process of selection is completed and that too after many many years down the line.

In other words, the Speaker's decision was a parting gift for the appellants. The changed regime was not willing to shake hands with the appointees in such controversial circumstances. It was for that reason that the respondent authorities of the Assembly decided not to take work from any of these appointees after 28.02.2006, within eight months of such engagements, and the parity which the appellants are looking for are not available either in facts nor do law support such engagement in the very first place. There is something really rotten in the manner in which the power that be exercised such power by making arbitrary hiring which is per se illegal. Therefore, the learned single Judge also has used some very strong observations with regard to such engagement, hiring or continuance or revival of panel by the outgoing Speaker at the relevant time.



Any indulgence shown to the appellants will be doing gross violation not only to law, but also to system because rule of law must prevail over any other authority.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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