

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12749 of 2010

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Guru Bishnu Sharma, Son of Sri Ashwini Kumar Sharma, Resident of Village-
Ratanpura, Police Station-Naugachhiya , District-Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna.
3. The Director, Secondary Education Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur,
Bihar.
5. The District Education Officer, Banka, Bihar.
6. The District Education Officer Bhagalpur, Bihar.
7. H.M. Rajat Jayenty High School Jotha.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Brisketu Sharma Panday, Advocate
For the State	:	Mr. Tripurari Nath Ambastha, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-03-2017

Heard learned counsel for the petitioner and the State.

The petitioner has moved the Court for quashing of
the order contained in Memo No. 135, Patna dated 06.07.2009 passed
by the respondent no. 2 by which his appeal has been rejected
upholding the order of termination dated 26.03.2008 passed by the
respondent no. 3.

The petitioner was initially appointed on the post of
Clerk on 10.08.1988 under the order of the respondent no. 5.
Thereafter, his service was terminated on 26.06.1990 but he was



again reinstated on 22.11.1990. In the meantime, Advertisement No. 38 of 1980 dated 06.12.1990 was published for making appointment on Class-III and Class-IV posts. Pursuant to the said Advertisement and on the recommendation of the District Establishment Committee, the service of the petitioner was regularized under Memo No. 937 dated 31.01.1997. However, his service was again terminated by the respondent no. 4 on 27.05.1997. Such order was stayed by the respondent no. 3 on 19.04.2000 and the respondent no. 5 issued show cause to the petitioner on 05.06.2003. The respondent no. 3 by letter dated 06.09.2013 directed all the Regional Deputy Directors of Education and District Education Officers to terminate services of all such employees whose appointment has been found irregular. In light of the same, the respondent no. 5 issued show cause dated 29.10.2003 to the petitioner to explain as to why his service be not terminated since the procedure has not been followed in the matter of his appointment. The explanation given by the petitioner not found satisfactory, the service of the petitioner was terminated by order of the respondent no. 5 dated 10.12.2003. The petitioner assailed the order in C.W.J.C. No. 1952 of 2004, which was withdrawn with liberty to file representation before the respondent no. 4. The respondent no. 4 set aside the order of termination on 22.04.2006 but respondent no. 3 again passed an order of termination on 26.03.2008,



which was assailed by the petitioner before the respondent no. 2 and rejection of the same by order dated 06.07.2009 has given rise to the present writ application.

Learned counsel for the petitioner submitted that the petitioner has unnecessarily being harassed not once but four times when his service was terminated and later on again he was reinstated and finally, after due advertisement, and him applying, his service was regularized and that should have been the end of the matter but the respondents have kept alive the issue unnecessarily and have finally terminated the service of the petitioner. Learned counsel submitted that the sole ground for such termination is the alleged non compliance of the State Government circular contained in Memo No. 16440 dated 03.12.1980. Learned counsel submitted that the said circular has been held to have become a dead letter because of its long disuse known as *desuetude*. For such proposition, learned counsel has relied upon a decision of the Division Bench of this Court dated 06.04.2010 passed in **L.P.A. No. 1492 of 2009 (State of Bihar & Ors. v. Dinesh Thakur)** and analogous cases. Learned counsel submitted that even the Supreme Court in the case of **Secretary, State of Karnataka v. Uma Devi (3)** reported as **(2006) 4 SCC 1**, which has been clarified in the case of **State of Karnataka v. M.L. Kesari** reported as **(2010) 9 SCC 247**, has held that such



persons, as similarly situated to the petitioner, cannot be termed as illegal appointee and at best be said to be irregular, and their services may be regularized if the Authority which has appointed them is the Competent Authority under law, and appointment is against sanctioned post.

Learned counsel for the State, on the other hand, in opposition to the writ petition, submitted that the petitioner has been given show cause on 29.10.2003 and the specific points included in the show cause were whether there was any public advertisement, policy of reservation followed and compliance of the requisites of Articles 14 and 16 of the Constitution of India. It was submitted that the admitted position was that due to there being no evidence produced by the petitioner satisfying such query, the termination order has been passed. Learned counsel submitted that a Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013(1) PLJR 964**, after considering the decisions of the Hon'ble Supreme Court in various cases including in the case of **Uma Devi** (supra) and **M.L. Kesari** (supra), has come to the conclusion and held that there cannot be any regularization of persons whose initial appointment was without open competitive selection and contrary to the mandate of Article 14 of the Constitution of India.

Learned counsel submitted that once this position is



established, and also in view of the fact that upon specific show cause asked on behalf of the petitioner on these two counts and the same not being satisfactorily replied, the order of removal of the petitioner from service, since his service was regularized in the teeth of the settled law, no interference is required.

Having considered the rival contentions, this Court finds substance in the contentions of learned counsel for the State. Once, admittedly, when the petitioner was not initially appointed in accordance with the scheme of the Constitution and the relevant circulars, and later, by a specific show cause calling upon him to satisfy the authorities and the same not eliciting any satisfactory explanation, the service of the petitioner which was regularized, is clearly not permissible in light of the Full Bench decision of this Court in the case of **Ram Sevak Yadav** (supra).

In view thereof, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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