

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1455 of 2014
IN
Civil Writ Jurisdiction Case No. 23002 of 2012**

- =====
1. Mohammed Kasim, S/o Late Mahboob Ali, Resident of Ward No. 2, Mahnar, P.S. - Mahnar, District - Vaishali.
 2. Nand Kishore Rai, S/o Sri Ram Iqbal Rai, Resident of Village - Airaji Sahbajpur, P.S. - Hajipur, District - Vaishali.
 3. Surendra Kumar Thakur, S/o Late Ghugali Prasad Thakur, Resident of Village - Mustafapur Harser, P.S. & P.O. - Gharaul, District - Vaishali.
 4. Ram Jatan Singh, S/o Late Sohan Singh, Resident of Village - Sisauni Rajauni, P.S. - Hajipur Sadar, District - Vaishali.
 5. Devendra Kumar Yadav, S/o Sri Ramasheesh Rai, Resident of Village - Chintamanpur, P.S. - Belsar, O.P. & District - Vaishali.
 6. Yogendra Kumar Singh, S/o Sri Sobhan Singh, Resident of Village - Khojan, P.S. - Arwal, District - Jehanabad.
 7. Sant Lal Paswan, S/o Sri Hari Lal Paswan, Resident of Block Campus Hajipur, P.S. - Hajipur, District - Vaishali.
 8. Ravindra Das, S/o Sri Asharfi Ram, Resident of Village Dighi Khurd, P.S. - Hajipur Sadar, District - Vaishali. Appellant/s

Versus

1. The State of Bihar through District Magistrate.
 2. District Magistrate, Vaishali Hajipur.
 3. District Establishment Deputy Collector, Vaishali, Hajipur.
 4. Block Development Officer, Bhagwanur, Vaishali.
 5. Block Development Officer, Pateri Belsar, Vaishali.
 6. Block Development Officer, Chehra Kalan, Vaishali.
 7. Block Development Officer, Rajapakar, Vaishali.
 8. Block Development Officer, Dehsri, Vaishali.
 9. Block Development Officer, Raghobpur, Vaishali.
 10. District Education Officer, Vaishali. Respondent/s
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Appearance :

For the Appellant/s : Mr. Siddhartha Prasad, Advocate
Mr. Om Prakash Kumar, Advocate
For the Respondent/s : Mrs. Alka Verma, AC to SC-17

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-11-2017

Seeking exception to an order dated 28.03.2014

passed by the learned Writ Court in C.W.J.C. No. 23002 of 2012, this



appeal has been filed under Clause 10 of the Letters Patent.

2. Facts in brief indicate that the petitioners were initially inducted into the department as Jeep Drivers and they worked right from 01.12.1986 for various periods. While they were so working, in the year 2005 when an advertisement was issued being Advertisement No. 1605, dated 08.10.2005 for selection and appointment of Jeep Drivers, the petitioners approached this Court in C.W.J.C. No. 10403 of 2005 and sought their appointment in pursuance to the advertisement issued. Alternatively, the prayer was also made that considering the fact that they have worked for more than 10 years, they were entitled for regularization. The issue was considered by the learned Writ Court and in para 6 and 7 of the order dated 06.02.2012 passed in the writ petition the following directions were issued:

“6. It is submitted on behalf of the petitioners that their case is fit for direction to the respondents to consider their case for One Time Regularization, as was directed in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, reported in (2006) 4 SCC 1 and in the case of State of Karnataka and others vs. M.L.Kesari and others, reported in (2010) 9 SCC 247.

7. Having heard counsel for the parties and having considered the fact that petitioners have been serving as Jeep Driver in the Collectorate,



Vaishali and its attached offices for over 10 years, I direct the State-respondents to consider their case for regularization in accordance with law against 11 vacancies of Driver along with other similarly situate persons, as early as possible, in any case within a period of two months from the date of receipt/production of a copy of this order before the Collector, Vaishali.”

3. Based on the aforesaid the District Magistrate, Vaishali considered the issue and on 01.10.2012, on the basis of a circular bearing no. 639 dated 16.03.2006 rejected the claim of the petitioners. The learned Writ Court also upheld the rejection order and therefore, this appeal.

4. Having heard the learned counsel for the parties, we are of the considered view that in dismissing the writ petition and upholding the order dated 01.10.2012 (Annexure-12) passed by the District Magistrate, Vaishali, the learned Writ Court has committed an error on 06.02.2010 while disposing of the writ petition (C.W.J.C. No. 10403 of 2005) as indicated hereinabove, the mandamus issued to the respondents were to consider the case of the petitioners for regularization, as one time measure, in accordance with law laid down by the Hon’ble Supreme Court in case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, reported in (2006) 4 SCC 1 and thereafter affirmed in the case of State of Karnataka and



others Vs. M. L. Kesari and others, reported in (2010) 9 SCC 247, in stead of doing so, based on a circular, which did not hold good after the law laid down by the Constitution Bench in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra), the departmental authorities rejected the claim. This was not permissible. Once in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra), the Constitution Bench directed for considering the claim of employees, which has been in service for 10 years or more for regularization after categorizing their cases in the category of illegal or irregular appointment, the District Magistrate under law was obliged to conduct exercise as directed by the Constitution Bench in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra) and could not have rejected the claim, based on a circular, which would not be legally enforceable after the judgment in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra). The learned Writ Court also without taking note of all these aspects of the matter rejected the claim of the petitioners. This being contrary to the law laid down by the Constitution Bench in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra), we have no reason to reject the claim of the petitioners on the contrary.



5. We allow the appeal, quash the order dated 28.03.2014 passed by the Writ Court in C.W.J.C. No. 23002 of 2012, so also the order as contained in Annexure-12 to the writ petition, passed by the District Magistrate, Vaishali and direct the District Magistrate, Vaishali to take action for considering the case of the petitioners as one time measure for regularization in accordance with law laid down in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others (supra) and thereafter followed in the case of State of Karnataka and others Vs. M. L. Kesari and others (supra) and take a decision within a period of six months from the date of receipt of certified copy of this order. If the aforesaid exercise is not concluded and final decision is not taken, the status quo ordered by this Court shall continue.

6. Needless to say that if the petitioners are aggrieved by the decision of the authority, the petitioners shall have liberty to agitate their claim afresh in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2017
Transmission Date	NA

