

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6688 of 2013

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Abhay Kr. Pandey son of Bharat Lal Pandey. Resident of village- Nagrah, P.O.-
Nagrah, P.S.- Naugachia, District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
3. The Director, Land Acquisition & Rehabilitation Department, Govt. of Bihar,
Patna
4. The Rehabilitation Officer, Koshi Project, Supaul
5. The Rehabilitation Officer, Madhyam Irrigation Project, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate
	:	Mr. Rajeev Kumar Singh, Advocate
	:	Mr. Nirala Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Sharma, AC to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 20-06-2017

The instant writ petition has been filed by the petitioner for quashing of the office order no.582 dated 05.06.1998, issued under the signature of the Director, Land Acquisition & Rehabilitation Department, State Government of Bihar, whereby service of the petitioner as Chainman has been terminated with immediate effect on the ground that his initial appointment itself was illegal and was made by an officer, who was not legally authorized to make such appointments. The petitioner has further prayed for quashing of the order and award dated 02.04.2012, passed by the learned Presiding Officer, Labour Court, Bhagalpur, in Reference Case No. 9 of 2000,



whereby it has upheld the termination of the services of the petitioner as Chainman.

2. The facts of the case in brief are that the petitioner was appointed as Chainman, a Class-IV post, by an office order dated 26.07.1996 issued under the signature of the Rehabilitation Officer, Kosi Project, Supaul, vide Annexure-3 to the writ petition purely on provisional basis.

3. The case of the petitioner is that after joining the aforesaid post of Chainman, his service was extended from time to time by the competent authority. Subsequently, on 07.10.1996, a press notice was published in the daily newspaper 'Hindustan' by the respondent no.3 whereby altogether 62 employees having been appointed by Rehabilitation Officer of different districts of the State of Bihar including the petitioner were directed to submit explanation as to why their services should not be terminated, as their appointments were illegal and the officers, who had made their appointment were not legally authorized to make such appointments. The petitioner claims that he submitted his explanation under registered post on 12.10.1996. However, once again, vide letter no.2237 dated 17.06.1997, issued under the signature of respondent no.3, the petitioner was asked to submit explanation in respect of his illegal appointment made by an officer, who was not competent to do



SO.

4. The petitioner contends that against the aforesaid show cause notice, he had submitted his reply through registered post, vide letter dated 30.06.1997 to the respondent no.3 in which he had mentioned that since he had been appointed by the competent authority under due process of law, there was no illegality in his appointment. However, vide office order dated 05.06.1998, issued under the signature of the respondent no.3, the petitioner was dismissed from service.

5. The petitioner raised an industrial dispute, which was referred by the Government of Bihar to the Labour Court-cum-Industrial Tribunal, Bhagalpur (for short 'Labour Court'). The reference made to the Labour Court was as under:-

“Whether the termination of service of Shri Abhay Kumar Pandey, chainman by the director, land acquisition and rehabilitation department, Bihar is justified? If not, what relief he is entitled to.”

6. After hearing the parties, the Labour Court, vide its award dated 02.04.2012 held that the termination of the petitioner by the management is justified and the petitioner is not entitled to get any relief.

7. Being aggrieved by the aforesaid award dated 02.04.2012 and the order of dismissal dated 05.06.1998, the petitioner



has filed the present writ application.

8. Learned counsel for the petitioner submitted that after the approval of appointment of the petitioner by the Director, the petitioner was being paid his salary regularly and his service was also extended from time to time, but his service was arbitrarily terminated by the respondents. He contended that since the petitioner had worked for more than 240 days in a calendar year, the impugned award passed by the Labour Court is vitiated in law as the same is contrary to the statutory provision prescribed in Section 25-F of the Industrial Disputes Act.

9. On the other hand, learned counsel for the State submitted that the petitioner was appointed on the post of chainman on 26.07.1996 by the respondent no.4 on provisional basis only. His appointment was wholly illegal in view of the fact that the Rehabilitation Officer had no authority to make such appointments. He contended that appointment of the petitioner was a part of larger conspiracy in the Land Acquisition Department, which had spread all over the State of Bihar, as a result of which nearly 1000 employees of the level of Class-III and Class-IV were appointed with ulterior motive. After this came to the notice of the State Government, steps were taken to dispense with their services leading to filing of several writ petitions. He contended that that such illegal appointments led to



prosecution of a large number of functionaries of the State Government and trials in Vigilance Courts in several cases are still going on. He contended that in some identical cases, the learned Single Judges had quashed the order of termination of such employees directing to reinstate them in services. The State filed Letters Patent Appeals against those orders and a Division Bench of this Court, vide order dated 29.01.2003 passed in L.P.A. No. 675 of 2000 and analogous cases set aside the orders passed by the learned Single Judges and dismissed those writ applications too. The aggrieved persons like the petitioner moved before the Hon'ble Supreme Court against the order passed by the Division Bench in L.P.A. No. 675 of 2000 and analogous cases, but their appeals were also dismissed, vide order dated 11.07.2006 passed in Civil Appeals No. 5682-5684 of 2004 and analogous cases.

10. He contended that the similar claims of other terminated class-III and class-IV employees have been rejected by this Court vide different orders passed in **C.W.J.C. Nos. 2539 of 2014, 2475 of 2014, 2628 of 2014, 2589 of 2014, 3372 of 2014, 2632 of 2014 and 39 of 2002.**

11. In support of his submission learned counsel for the State has produced copies of the orders passed in different writ petitions being C.W.J.C. Nos.2589 of 2014, 3372 of 2014, 2632 of



2014 and 39 of 2002. He submitted that the impugned order passed by the learned Presiding Officer of the Labour Court, Bhagalpur does not suffer from any illegality or infirmity or does not warrant any interference.

12. In reply, learned counsel for the petitioner submitted that the case of petitioner stands of different footing to that of the other employees, who were terminated by the respondents. These employees had resorted to remedy under Article 226 of the Constitution of India at the initial stage itself whereas the petitioner never approached this Court in its writ jurisdiction after the order of termination rather he raised an industrial dispute and the State Government of Bihar in exercise of its statutory power under Section 10 (1)(c) of the Industrial Disputes Act, 1947 referred the dispute to the Labour Court. He contended that before the Labour court the petitioner had taken a specific plea that he had worked for more than 240 days in a calendar year with the respondents State his termination from service was void ab-initio in law for non-compliance with Section 25-F of the Industrial Disputes Act.

13. He contended that since the termination order passed against the petitioner was without complying with Section 25-F of the Industrial Disputes Act, there was no reason for the Labour Court to give a finding against the petitioner.



14. I have heard learned counsel for the parties and perused the record. I have also perused the orders passed in L.P.A. No. 675 of 2000 and analogous cases and L.P.A. No.1221 of 1999 and analogous cases from the original records.

15. It would be evident from perusal of the orders passed in L.P.A. No. 675 of 2000 and analogous cases and L.P.A. No.1221 of 1999 and analogous cases that the case of the petitioner is exactly identical to the case of similarly circumstanced persons in whose favour, learned Single Judges had initially passed the orders, which were challenged before the Division Bench in appeal and the Division Bench after making an elaborate discussion of the facts and law involved in those cases, set aside the orders passed by the learned Single Judges in different writ petitions and allowed the appeals filed by the State Government and dismissed all the writ applications.

16. In L.P.A. No.675 of 2000 and analogous cases, a Division Bench of this Court had occasion to take note of the various arguments advanced on behalf of the terminated employees and analyze the applicability of the case laws relied upon on behalf of the parties. At this juncture, I may profitably extract the following paragraphs of the judgment in L.P.A. No.675 of 2000:-

“32. The respondents have also placed reliance upon on the judgment of the Supreme Court in the matter of Gujarat Agricultural



University v. Rathod Labhu Bechar, 2001 (3) SCC 574. In the said matter the appellant University had engaged 5100 daily rated labourers for various activities. Their appointments were made in the exigencies of work dehors the recruitment rules. Some of such workers came before the Industrial Tribunal and the Tribunal directed that such workers who had completed 10 years of service as on 1.1.1993 be regularized. The High Court directed the appellant University to make the payment to the workmen at the minimum of the pay-scale and also to frame a scheme for the regularization of such daily rated labourers. Though the Gujarat Agricultural University went up in appeal but the University itself submitted a scheme for absorption of those employees. The Supreme Court in such circumstances observed that if a scheme is framed that the appellant had no impressive sources of its own being an Agricultural University, depending upon the State fund the labourers who were not regularized and were continuously working for 10 or more years with a minimum of 240 days in each calendar year should be paid minimum wages as prescribed by the Government from time to time. **Present is not a case where the daily rated or such ad hoc appointees are required to be regularized in a scheme. In the**



present matters the State has come out with a straight case that the appointments are patently illegal and such appointees do not have any right to continue.

33. When the writ petitioners say that equity be applied in their favour and they be not asked to go back then they are required to show to this Court that what legal authority the officer who had issued orders and what right they had to join the services. The equity is not a empty concept, the equity in fact tilts the balance when all other things are equal. The petitioners can not be allowed to say that though their entry was illegal despite that they would hold the post. The petitioners' also can not be allowed to say that though their entry was bad but was later on validated. We have already observed that what was illegal and void could not become legal and valid. In fact the equity must come against such employees who had enjoyed the illegal employment and received salary for long years though they had no right or authority to occupy the post/office or receive the salary simply because the doors were opened for them by some unauthorized officer by his unauthorized act. Can it be argued before a Court of law that stay for a long period though was unauthorized and illegal would create a right in favour of those



who illegally entered in the office. In the field of service law the principle of adverse possession has no application. In a case of adverse possession if a person remains in unauthorized possession openly, publicly with hostility then he acquires right by prescription but the said principle cannot be applied to the service jurisprudence. **If such persons whose initial appointments are bad are allowed to occupy the office and post simply because they continued to hold the same then it would be adding premium to an illegality. What was illegal would continue to be illegal. What was void would continue to be void. Either of these can not be legalized nor can the Court grant relief in favour of such persons applying the principles of equity. The equity bridges the gaps and not the voids. Under the service law, appointments are to be made following certain norms and principles. When a procedure is prescribed then the same is to be followed.** If contrary to all these anyone can be appointed then everyone must be appointed. If everyone cannot be appointed then anyone, a blue eyed baby or chosen one, picked one, selected one or elected one by the concerned officer can not be appointed. Principle of equity can not run contrary to law and the right of equality enshrined under the Constitution of India. An



Officer howsoever high he is can not favour a group of persons, a particular caste, particular sex or politically protected persons. The Constitution of India guarantees the right of equality saying that if I am to be selected through a process then everybody must be selected through the process. If someone can be appointed without following the procedure then I must also be appointed without following the procedure/process. According to us everyone has an equal right. The preamble of the Constitution makes it clear that we have given the Constitution to ourselves, no-one has thrust or forced the Constitution upon us. It says “We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; In Our Constituent Assembly this twenty-sixth day of November, 1949, do hereby Adopt, Enact and Give to Ourselves this Constitution.” When we have taken the oath we have assured ourselves and assured all others that there would be equality of status and opportunity then the Constitution of India which guarantees



our other rights can not be ignored by applying the principles of equity. We have assured all of equality, how can the State or its functionaries be allowed to be dishonest to others. A Court of law can not join either the State or its functionaries in its illegal designs. The Courts are meant for curbing the illegality. The Court has to find that what is right and wrong if right is based upon a legal right then the Court would always approve it and would give the relief. But in cases like present the Court of law would not apply the principle of equity and protect an illegality rather perpetuate an illegality ad-indefinitum.

34. It is indeed gratifying to note that the State is taking some interest in matters like present and is trying to remove those who were allowed to enter in services illegally or from the backdoor.

35. The question of continuance in service would in fact be based upon the application of policy of mercy or policy of estoppel or on the fact of long stay. We have already found that long stay of an incumbent in an establishment/Government Office would not make his stay justifiable. The question of estoppel would not arise in a matter like present. The question of mercy does not arise because they have already obtained from the State for long many years what they were otherwise not



entitled to. In our opinion such a protection now would be adding premium to illegality and would be in violation of the principles of Justice, equity, fair play and good conscience. The illegal stay howsoever long would not make the same legal. If the question of mercy arises then the petitioners must show to this Court that why mercy should not be shown in cases of those who are awaiting their turn of appointment/employment for long but are still out of employment and are unable to earn anything or get anything from State either in form of salary or subsistence.

36. The matter may also be appreciated from another angle. The writ petitioners were appointed in the year 1985 or so. Some of the petitioners were immediately terminated but were later on re-employed showing that they were illegally retrenched. The matter did not end there and an enquiry into the subject was made. **The enquiry showed that all such persons were illegally appointed and the appointments were motivated. The State Government after finding that the appointments were illegal proposed to terminate the services of such persons and directed registration of first information report against the officer who had issued such orders. It is not in dispute before us that the said Officer is facing prosecution**



because he had issued, as alleged by the State Government, illegal orders which were contrary to law and were for reasons best known to the said Officer. On one side the said officer/officers is/are being prosecuted because they issued appointment orders in favour of the petitioners and on the other hand the petitioners, who were benefited by those illegal orders are requesting the High Court that they be allowed to continue and their services be regularized. Would it not be fallacy of law that the person who issued the orders is being prosecuted and the persons who are benefited by the said orders are to be rewarded reinstatement in services or their regularization? Would it not mean that the High Court is agreeing to the appointments and is finding the same to be valid or is exercising its extra ordinary jurisdiction in favour of those persons who are benefited by illegal orders? The High Court certainly would not be a party to all these illegal exercises.

37. In our considered opinion the judgments under appeal can not be allowed to stand, these deserve to and are accordingly set aside. The appeals filed by the State Government are allowed. The appeals filed by the writ petitioners are dismissed. All the writ



applications are dismissed. However, there shall be no order as to costs.”

(emphasis mine)

17. I also deem it appropriate to extract the following observations made by a Division Bench of this Court in L.P.A. No. 1221 of 1999 and analogous cases while allowing the appeals filed by the State against the orders passed by the learned Single Judges in different writ petitions whereby termination of services of the writ petitioners, whose cases were identical to that of the petitioner of the present case had been set aside and the State Government had been directed to reinstate them with arrears of salary:

“8. We have perused the materials on record and considered the submissions of learned counsel for the parties. It is evident on the basis of a perusal of the materials on record that such appointments of Class-III and Class-IV employees in the Land Acquisition Department in mid 80's were done without any advertisement, and were at the instance of the Rehabilitation Officer-cum-Special Land Acquisition Officer. To the extent it surfaced and came to the notice of the authorities, about 1000 such appointments were made. It received the attention of the State Government leading to the show-cause notices to all such employees. In most of the cases, they have shown cause and, on



a consideration of the materials on record including the cause shown, their services were dispensed with. **What immediately attracts attention is that it seems to have been part of a well-organized conspiracy all over the State of Bihar. It assumed the dimension of a scam and had followed a uniform pattern. All the appointments at Class-III and Class-IV levels were done initially for a limited period on ad hoc basis on purely temporary basis against the prescribed scale invariably under the orders of the Rehabilitation Officer. They were given extension of service with retrospective effect and until further orders, seemingly under the orders of the Director. It is further noticeable that only typed copies of the alleged orders of the Director have been placed on record.** They have placed on record photo copies of the orders of some or most of the Rehabilitation Officers but not one photo copy of the order of the Director is on record.

9. **This speaks volumes about the magnitude of the conspiracy carried out uniformly throughout the State.** The observations made in **State of Bihar Vs. Prashant Kumar Sharma (supra)**, as stated in paragraph 13 of the judgment are that "...The State cannot be asked to produce such an order specially in a case where it has come out with a



specific plea that neither there was an approval nor a consent. The writ petitioners if are relying upon the observations made in those appointment orders then it would be for them to bring on record certain material that their appointment orders were issued with prior approval of the Director General or any post facto sanction was given by him. In our considered opinion, the learned single judge was not justified in observing that mention of this fact in the appointment order that the same were issued as orders of the Director would clinch the issue. In our considered opinion, the burden was upon the writ petitioners to prove the fact which they miserably failed to discharge ...”

In other words, these observations of the Division Bench render typed copies of the alleged orders of the Director, approving the action taken by the Rehabilitation Officer, apocryphal.

10. This gigantic conspiracy spread all over the State of Bihar was investigated by the State of Bihar and has charge-sheeted a large number of authorities responsible for such appointments. The Cabinet (Vigilance) Department was also impleaded as a party respondent in these appeals and were called upon to explain as to why the officers alone were prosecuted completely leaving out the



beneficiaries, i.e. the appointees. The Cabinet (Vigilance) Department filed an affidavit and prayed for further time to answer this question. We have declined to do so, inter alia, for the reason that the State Government may be perhaps have thought that the authorities of the State Government were sought to be punished by criminal action, and the beneficiaries were punished by termination of their services. We do not wish to enter into this aspect of the matter”.

(emphasis mine)

18. In view of the admitted fact that the case of the petitioner is like the case of the petitioners of the writ petitions whose matters were carried before the Division Bench by the State Government in L.P.A. No. 675 of 2000 and analogous cases and L.P.A. No. 1221 of 1999 and analogous cases, I am of the considered opinion that no relief can be granted to the petitioner in the present matter.

19. It would be evident from the pleading of the parties and the materials available on record that a rank illegality had been committed in a planned manner by several officers throughout the State of Bihar in conspiracy with each other in appointment of Class-III and Class-IV employees including the petitioner in the Land Acquisition Department and the appointments were done without any



advertisement and were made by an officer who was not competent to do so.

20. It is needless to say that Article 14 of the Constitution provides equality of opportunity. It is an integral part of our Constitution. It requires each and every State action to be tested on the touch-stone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is wholly illegal and cannot be sustained in law.

21. I also see no merit in the contention of the petitioner that the award passed by the Labour Court is bad in view of the fact that the petitioner did not approach this Court at the initial stage and had raised an industrial dispute and, thus, the Labour Court was not competent to look into the decision of this Court in the aforesaid Letters Patent Appeals. The plea of the petitioner that he had worked for more than 240 days in establishment of the respondent-State of Bihar in a calendar year and, thus, the termination order, which was passed against him without complying with Section 25-F of the Industrial Disputes Act cannot be upheld as in a situation like the present one where several officers of the State are being prosecuted under various provisions of the Prevention of Corruption Act for making illegal appointment of several Class-III and Class-IV employees in conspiracy of each other, it would be travesty of justice



to employ and reinstate the petitioner in service specially when two Division Benches of this Court have examined the legality of such appointments and have opined them to be wholly illegal and without jurisdiction and the decisions of the Division Bench have not been interfered with by the Hon’ble Supreme Court.

22. Under the circumstances noted above, even if the petitioner illegally continued in service for more than 240 days in a calendar year and the statutory provision prescribed under Section 25-F of the Industrial Disputes Act was not complied with while dismissing him from service, I refuse to exercise my discretionary jurisdiction under Articles 226 of the Constitution to quash the award passed by the Labour Court, as setting aside of that order would give rise to another illegality and it is well settled in law that a writ court would not pass an order, which would promote or perpetuate illegality.

23. Accordingly, the writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

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