

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2368 of 2016

In
Civil Writ Jurisdiction Case No.17607 of 2012

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Mahendra Yadav, Son of Shri Gope, Resident of Mohalla- New Paharpur,
Police Colony, P.O.- Anishabad, P.S. Gardanibagh, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar,
2. The Principal Secretary Human Resources Department, Government of Bihar,
Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna, Division, Patna.
5. The District Education Officer, Patna.
6. The Principal Saheed Rajendra Prasad Singh High School Gardanibagh,
Patna-2, District- Patna.
7. The Principal Lal Bahadur Shastri Nagar Boy's High School, Shastri Nagar,
Patna-23, District-Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Upendra Prasad Singh
For the Respondent/s : Mr. AC to AAG 15

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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 : 08-01-2018

The reason for delay of 3 years and 61 days stated in the I.A No.10015 of 2016 is because of pendency of a review application. After disposal of the review application, the appellants had sought legal aid and only after that, the appeal has been preferred. Delay is condoned. I. A. stands allowed.

The writ application of the present appellant along with yet another so-called employee was heard together as they were



common petitioners in CWJC No.17607 of 2012. They sought a direction upon the respondent authorities of the Education Department for regularization of their service in a previously filed writ application, which was CWJC No.1896 of 2008. The learned Single Judge did not find any infirmity in the decision of the respondents to disengage the present appellant from the responsibility of a Cycle Stand Keeper. However, liberty was granted to represent before the authorities. The authorities heard the parties and passed a rather detailed order, which has been extracted in the order impugned by the learned Single Judge. The learned Single Judge after considering the factual and legal aspect of the matter relied on a Division Bench decision reported in the case of ***Ram Sevak Yadav & anor. vs. State of Bihar & ors., reported in 2013 (1) PLJR 964*** and culled out the ratio of the decision, which was laid down in paragraph 43, which reads as under :

“43. We therefore sum up our conclusion and answer the reference as follows:-

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it



was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must now have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

6. In the considered opinion of this Court the case of the petitioners is squarely covered by the Apex Court laid down by the Full Bench in the case of Ram Sevak Yadav (supra). As a matter of fact when there is no dispute that the petitioners were also appointed on daily wages against un-sanctioned post their engagement was also in teeth of Article 14 of the Constitution of India which in turn would make their appointment illegal and not irregular, the distinction which was sought to be made in clear terms by the Apex Court in the case of Uma Devi (supra) the Full Bench in fact had also considered this aspect in the case of Ram Sevak Yadav in paragraph 44, wherein it was held as follows:

44. The petitioners were appointed in temporary capacity for a process contrary to Article 14 of the Constitution without competitive selection as an individual favour doled out to them. There is no material to hold that they were appointed against vacant sanctioned post and possessed qualifications for the same. They were terminated before (Uma Devi) (supra) and have sought to retain their status by virtue of Court proceedings and are therefore not entitled to the benefits of paragraph 53. The issue of any procedural



irregularity for a finding of forged appointment is therefore irrelevant.”

From the above, it is evident that the reasons for dismissal of the writ application by the learned Single Judge seems to be on valid and cogent grounds. The engagement of the appellant by the Principal was not on a sanctioned legal post which was available. It was a working arrangement which does not create any right either for interference with the order of disengagement or any right of regularization.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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