

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4224 of 2017

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1. Ashwini Kumar, Son of Shyam Kishore Prasad, Resident of Muhalla - Padari - Ke - Haveli, Police Station - Khajekalan, District - Patna
 2. Ranjan Kumar, Son of Uma Shankar Prasad, Resident of Haveli Kharagpur, Police Station - Haveli Kharagpur, District - Patna
 3. Randhir Roy, Son of Jagdish Roy, Resident of village - Pipara, Police Station - Nonepur, District - Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Animal Husbandry, Govt. of Bihar, New Secretariat, Patna
3. The Director, Department of Animal Husbandry, Govt. of Bihar, New Secretariat, Patna
4. The Deputy Director (Head Quater), Department of Animal Husbandry, Govt. of Bihar, New Secretariat, Patna
5. The Regional Director, Animal Husbandry, Darbhanga Range, Darbhanga
6. The Special Officer, Intensive Cattle Development Block, Barauni

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
For the Respondent/s : Mr. Arun Kumar Bhagat, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 31-07-2018

Heard learned counsel for the parties.

In this case, the petitioners are challenging the order contained in Memo No. 217 dated 29.1.2016 passed under the signature of Director, Animal Husbandry, whereby, the services of several employees including the petitioners who were working on the post of Progress Assistant have been terminated in view of the order dated 25.11.2014 passed in C.W.J.C. No. 12904 of 1996 and analogous cases as well as the order dated 24.4.2015 passed in LPA No. 418 of 2005 & 419 of 2005.



This Court is not required to deal with the facts in the present case. Some facts are admitted. The petitioners had entered into the service of the Progress Assistant, as they were appointed illegally, they were terminated from service. Sri Sashibhushan Kumar filed C.W.J.C. No. 12904 of 1996 and analogous cases challenging the action of the Government whereby their services were dispensed with. The matter was referred to the Full Bench and the Full Bench vide order dated 25.11.2014 accepted the contention of the State that their entry itself was illegal and, ultimately, the Court arrived to a finding that their appointment has been made on extraneous consideration, in utter disregard to the principle of equality enshrined under Article 14 and 16 of the Constitution of India and, as such, they did not acquire the status of permanent employee. It will be better to quote the relevant portion of the said judgment which reads as follows:-

“Let me assume for a moment that the Regional Director of Animal Husbandry was empowered to make appointment of Class III ministerial staff and Class IV staff under him. Even in that case, was the Regional Director justified in making the appointments in the manner in which he made the appointments. The power has to be exercised in the manner in which it is directed to be exercised. Even under 1966 delegation of power, the Regional Director was not empowered to make appointments indiscriminately, at his will or without following due process of selection.



In the present case, each petitioner was initially appointed as a casual worker. After serving for a year or so, each writ petitioner was regularized in Class III service on the pretext that each petitioner had rendered "long service". Evidently, the appointment of the petitioners was made contrary to all canons of service jurisprudence. Admittedly, the Regional Director had not invited applications by public notice. None of the petitioners had to face competition. They were offered the employment on a platter without following due process of law. The appointment of the writ petitioners was ex facie bad and illegal and untenable. The judgments of the Hon'ble Supreme court in the matter of Uma Devi (supra) or M.L. Keshri (supra) cannot be pressed into service to regularize totally illegal service of the writ petitioners. Time and again the Hon'ble Supreme Court has deprecated the illegal appointments made in the State service by adopting dubious measures and the act of regularization of such dubious appointments.

In my view, the appointment of the writ petitioners was totally illegal and arbitrary, the least that the State Government could do is to get rid of such employees appointed on extraneous consideration in utter disregard of the principle of equality enshrined in Article 14 and 16 of the Constitution.

For the aforesaid reasons, the writ petitions and the appeal are dismissed.

Interim reliefs, if any, stand vacated."

In pursuance thereof, the action has been taken and terminated the petitioners and the order passed by the Full Bench having been informed that it has not been interfered with by the



Hon'ble Apex Court but, learned counsel for the petitioners submits that one Dhirendra Kumar Karn & Ors. have approached the Jharkhand High Court in WP(S) No. 3361 of 2016 which vide order dated 19.10.2016 allowed the writ petition but, having no knowledge of challenging the order before the Higher Forum.

As the full Bench judgment of this Court covers this case and is binding to this Court, whatever be the judgment of the High Court of Jharkhand has persuasive value not a binding precedent.

In that view of the matter, on account of binding precedent, this Court does not find any merit in the present writ application and the same is hereby dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2018
Transmission Date	NA

