

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.348 of 2016

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1. Amrendra Prasad Yadav Son of Late Deo Narayan Yadav, Resident of Village and Post Office - Mohanpur Choumukh, Police Station - Bihariganj, District - Madhepura (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner - cum - Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
2. The Deputy Secretary, Water Resources Department, Sinchai Bhawan, Government of Bihar, Patna.
3. The Director Land Acquisition and Rehabilitation Department, Water Resources Department, Sinchai Bhawan, Government of Bihar, Patna.
4. The Special Land Acquisition - cum - Rehabilitation Officer, Koshi Project, Saharsa, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Adv.
Mr. Ganjendra Kumar Singh, Adv.
For the Respondent/s : Mr. Jainendra Kumar Sinha, A.C. to S.C19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-03-2018

Heard Mr. Udit Narayan Singh, learned counsel for the petitioner and Mr. Jainendra Kumar Sinha, A.C. to S.C.17 for the State.

The issue which falls for consideration in the present case is a confirmation of the obstinate nature of the State- respondents who are not ready to mend their ways despite the inter party judgment in between the parties.

The order bearing Memo No. 649 dated 4.4.2013 of the



Director, Land Acquisition and Rehabilitation, Water Resources Department, a copy of which is impugned at Annexure-16 to the writ petition is put to challenge whereby while considering the prayer of the petitioner for regularization of his services on the post of Senior Accounts Clerk in the Office of Special Land Acquisition, Kosi Project, Saharsa that while rejecting the prayer for regularization the Director, Land Acquisition and Rehabilitation has proceeded to terminate the very service of the petitioner on grounds of illegal appointment.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission.

The bare essential facts leading to the writ petition is that this petitioner was initially appointed by the Special Land Acquisition Officer vide order bearing Memo No.225 dated 9.12.1980 on temporary basis on the post of Peon. That the Special Land Acquisition Officer was authorized to make such appointment in work exigencies, is confirmed from the office order issued by the Director, Land Acquisition and Rehabilitation, Water Resources Department bearing No. 625 dated 21.3.2001, a copy of which is enclosed at Annexure-10 and wherein the Director while rejecting the claim of one Ramesh Prasad Singh, has categorically mentioned at paragraph 5



of the order that vide order bearing memo No. 153 dated 18.2.1978 the Special Land Acquisition Officer was vested with powers of appointment, which is reproduced hereinbelow:

“5. विभागीय ज्ञापक 153 दिनांक 18.2.78 द्वारा विशेष भू-अर्जन पदाधिकारी को तदर्थ नियुक्ति की शक्तियां प्रदान की गई थी जिसे विभागीय पत्रांक 7836 दिनांक 2.12.83 द्वारा वापस ले ली गयी थी । विशेष भू-अर्जन पदाधिकारी द्वारा इनकी नियुक्ति तब की गई जब उन्हें प्रदत्त नियुक्ति की शक्तियां वापस ली जा चुकी थी । फिर भी इनकी नियुक्ति विशेष भू-अर्जन पदाधिकारी, औरंगाबाद द्वारा 15. 8. 88 को की गयी ।”

It is thus manifest that the Special Land Acquisition Officer was vested with powers to make adhoc appointment which continued until issuance of departmental letter No.7836 dated 2.12.1983 when such power was seized from him. This letter is a confirmation that there was no illegality in the appointment of the petitioner by the Special Land Acquisition Officer on the post of Peon. The pleading on record would again confirm that the Director, Land Acquisition and Rehabilitation vide his memo No.4202 dated 20.10.1981 extended the services of the petitioner on the post of Peon vide Annexure-2 and continued to do so even thereafter vide order bearing memo No. 16 dated 19.01.1982 at Annexure-3. It is around this time that the Rehabilitation Officer, Kosi Project recommended the case of the petitioner for appointment on the vacant post of Junior Accounts Clerk vide his letter dated 05.02.1982 addressed to the Director, Land



Acquisition and Rehabilitation at Annexure-4. The Director, Rehabilitation and Land Acquisition vide his order 123 dated 6.2.1983 accepted the request and appointed the petitioner on the vacant post of Junior Accounts Clerk albeit provisionally vide order present at Annexure-5 and which engagement was extended vide order bearing memo No.1864 dated 19.5.1982 of the Director, Rehabilitation and Land Acquisition at Annexure-6. The appointment was further extended vide order bearing No.3644 dated 11.10.1982 of the Director at Annexure 6/1 with further extension coming through letter No.199 dated 14.4.1983 of the same authority whereby the appointment of the petitioner on the post of Junior Accounts Clerk was extended until further orders.

The Director, Land Acquisition and Rehabilitation vide his order dated 20.12.1988 accepted the recommendation of the Establishment Committee for promotion of the petitioner along with some others as Senior Accounts Clerk vide Annexure-7. The petitioner thus continued to serve on the post of Senior Accounts Clerk by virtue of such promotion until he was issued a show cause on 17.01.2003 questioning his initial appointment as Peon as also his subsequent appointment as Junior Accounts clerk which was duly replied but was followed by an order of termination dated 24.09.2003.



The petitioner questioned his termination before this Court in C.W.J.C.No.7766 of 2003 and a coordinate bench of this Court vide judgment and order passed on 30.03.2010, a copy of which is enclosed at Annexure-12, quashed the termination order dated 24.09.2003 and issued direction to the respondents to consider his claim for regularization in accordance with law, drawing their attention to the judgment of this in the case of **Vijay Narayan Singh versus the State of Bihar** reported in **2009(4) PLJR 648**.

Feeling aggrieved the State respondents preferred intra court appeal giving rise to L.P.A. No. 1046 of 2015 and which was allowed with the modification of the order of the learned Single Judge to the extent whereby a direction was issued to initiate civil/criminal proceedings against official responsible for appointment of the petitioner as a Peon, Junior Accounts Clerk as well as Senior Accounts Clerk. The judgment and order of the Single Judge was modified to the said limited extent. It is taking clue from the liberty so granted under the order of the learned Single Judge for consideration of the case of the petitioner for regularization that the respondents after serving notice on the petitioner on 14.2.2013 at Annexure-14 and on receipt of his representation at Annexure-15 have proceeded through the Director, Land Acquisition and Rehabilitation to reject the



claim of the petitioner for regularization and alongside his services have been terminated vide memo No. 649 dated 04.04.2013 impugned at Annexure-16. Feeling aggrieved he is again before this Court.

While Mr. Singh learned counsel for the petitioner has exclusively relied upon the observation of the learned Single Judge in the previous round of litigation present at Annexure-12 in support of his submission that the claim for regularization against the post of Senior Accounts Clerk could not have been rejected by the Director himself who has accepted the recommendation of the Rehabilitation Officer for appointment as Junior Accounts Clerk and has also accepted the recommendation of the Establishment Committee for further promotion as Senior Accounts Clerk, Mr. Jainendra Kumar Sinha learned counsel for the State while questioning the jurisdiction of the appointing authority in appointing the petitioner either on the post of Peon or as a Junior Accounts Clerk, has relied upon a judgment of the Division Bench in L.P.A.No.675 of 2000 which was heard analogous with several other Appeals including **L.P.A. No. 618 of 2000 (State of Bihar versus Siya Ram Chaudhary)** to submit that similar issue had earlier fell for consideration and the Division Bench did not choose to interfere with the dismissal orders vide its judgment and order dated 29.8.2003 which has been affirmed until the Supreme



Court.

Surprisingly even though the judgment of the Division Bench rendered in the case of **Siya Ram Chaudhary** (supra) so relied upon by Mr. Sinha to support the impugned order was passed on 29.01.2003 i.e 7 years of the judgment passed by the learned Single Judge at Annexure-12 yet neither before the Single Judge nor before the Division Bench did the State choose to contest the claim of the petitioner on this ground. In my opinion, there being an inter party judgment between the parties present at Annexures-12 and 13 if the State failed to contest the claim on the issue which fell for consideration in the case of **Siya Ram Chaudhary**(supra), they cannot be permitted to raise the same after the issue is concluded by inter party judgments referred to above. Whether or not the issue which engages the parties in the case of petitioner, was a subject of the judgment rendered in the case of **Siya Ram Chaudhary**(supra), this Court is not persuaded to examine because at no stage of earlier round of proceedings did the State rely upon the said judgment to contest the claim and now the inter party judgment of the learned Single Judge even after the modification by the Division Bench would not permit the respondents to raise fresh issues. It is thus to be seen whether or not the claim of the petitioner warranted a favourable



decision or the termination order holds good.

I have heard learned counsel for the parties and I have perused the records.

The sequence of events stated above more particularly the admission of the Director, Land Acquisition and Rehabilitation in his office order dated 21.03.2001 enclosed at Annexure-10 confirms that the Special Land Acquisition Officer was vested with jurisdiction to make adhoc appointment between the period 18.2.1978 until 21.02.1983 in terms of the office orders issued to such effect. The appointment of the petitioner thus by the Special Land Acquisition Officer vide Memo No.225 dated 09.12.1980 at Annexure 1 together with its extensions granted by the Director, suffered no infirmity nor can the appointment of the petitioner as a Peon can be held having illegal colour. It is so surprising that even though the learned Single Judge in the previous round of litigation has specifically answered this issue at running page 76 of the proceeding and which finding of the learned Single Judge as to the initial appointment of the petitioner on the post of Peon has not been interfered with by the Division Bench even while modifying the judgment, thus attaching finality on the initial appointment of the petitioner as a Peon yet the Director by terminating the service of the petitioner has tried to overreach the



settled legal position. I am persuaded to reproduce the opinion of the Single Judge upholding the initial appointment of the petitioner as a Peon as well as his promotion to the post of Accounts Clerk which runs as under:

“An undisputed almost admitted fact not denied in this counter affidavit emerges at the threshold from the order of this Court in C.W.J.C. Nos. 5692 of 1998/5964 of 1998, that the appointing authority in the cadre of ministerial employees including Class-IV post was the Special Land Acquisition Officer-cum- Rehabilitation Officer. This read in conjunction with office order no. 625 dated 21.3.2001 makes it explicit that the power to make ad hoc appointment was vested in the Special Land Acquisition Officer/Rehabilitation Officer in between 18.2.1978 and 2.12.1983 when it was revoked. The petitioner was an appointee of 9.12.1980.

His appointment for three months was in the background of the refusal or failure of the State authority to make regular appointment on vacant sanctioned post of peon affecting government work leaving the officer at the local level with no option but to make such ad hoc appointment in the interest of work as mentioned in the appointment order communicated to the Director, while seeking his approval. The issue whether the Rehabilitation Officer was competent to make the appointment or not loses much of its relevance in view of the approval granted to the appointment of the petitioner by the Director when similar approvals have met the acceptance of a Division Bench of this Court in L.P.A. No. 270 of 2000.

This Court has no hesitation in holding that the appointment of the petitioner was against a sanctioned vacancy by an authority competent to do so. In this manner, he continued for long years as a peon when he came to be appointed as a Junior Accounts Clerk by the Director, competent to do so on a vacant post on 5.2.1982. On this occasion also the Rehabilitation Officer emphasizes the available vacancy not being filled up affecting Government work, while seeking the approval of the Director. The specific assertion of the petitioner in his



pleadings that he held the qualification for appointment as a Junior Accounts Clerk has not been denied in the counter affidavit.

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The counter affidavit nowhere explains as to why for such long years from 1980 till 2003, when his service book had also been opened, he was granted appointment/promotion by an establishment committee why the irregularity/illegality in his appointment was not noticed and/or questioned by the authorities. Twenty three years of service by any standard is more than a reasonable period of time to preclude the respondents of their authority to question the allegedly illegal appointment.

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The petitioner has continued in service by an interim order dated 5.1.2004 and is scheduled for superannuation in the year 2013. At this stage, to hold on the irregularity/ illegality of his appointment and dismiss the writ petition on that action shall not be doing justice to the petitioner unless and until the same standard is applied to the officers of respondent authority also. On the facts of the case, this Court finds it difficult to hold that the petitioner can be classified outright as an illegal appointee. He may at best fall in the category of a person irregularly appointed continuing in a temporary capacity since long years. He, therefore, clearly falls in the category of persons discussed in Paragraph-44 of the judgment of Uma Devi (supra) to be considered for regularization.

This Court does not uphold the order of termination dated 24.9.2003 as an illegal appointee. It is accordingly set aside.

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This Court, therefore, directs that if the respondents propose to deny regularization to the petitioner, they shall be required to pass a reasoned and speaking order. The standards by which the officials of the respondents State purport to act are the standards by which the Court shall bind them and test their actions. Simultaneously, to any such order denying regularization to the petitioner, this Court directs the respondents to initiate civil/criminal proceedings including suspension



forthwith of the officer/officers who not only appointed the petitioner whether as a peon/Junior Accounts Clerk/Senior Accounts Clerk but even those successor officer who continued to utilize the service of the petitioner and paid him salary at least till 5.1.2004.

A peculiar feature appearing in such matters before this Court is that the State officials keep silent and do not disclose what action has been taken against its officers who made such illegal/irregular appointments. Action appears to have been taken selectively. Even in the present case, the counter affidavit filed in the year 2003 is silent about what development took place in the F.I.R. lodged in 1997 and how many officers had to face the wrath of the law. This Court hopes and expects that the State authorities shall fulfil their constitutional obligations not only with regard to those who obtained the illegal appointment but even with regard to those who made the illegal appointment. This Court is further constrained to take notice of the fact that the present nature of cases are primarily limited to appointment on Class-III and Class-IV posts. Therefore, it has been noticed in the case of Vijay Narayan Singh (supra) that in an environment of limited employment opportunity in the State of Bihar where the Government was the principal employer, it was the officers of the State who misused their powers to turn their office into a private fiefdom for doling out Government employment like that given to a private domestic servant. The man securing appointment on Class-III or Class-IV post, his social status being obvious was already in dire straits for a job. The person making the appointment equally if not was more guilty for exploiting this desperate position of the person seeking employment.

The writ application stands allowed.”

(Emphasis supplied)

The opinion expressed by the learned Single Judge quoted hereinabove is a confirmation of the fact that no legality was found either in the initial appointment of the petitioner as a Peon or his subsequent appointment as an Accounts Clerk including his



promotion as a Senior Accounts Clerk. In fact even if some kind of irregularity was noticed by the learned Single Judge but despite noticing the irregularity, a direction was issued to the authorities to consider the claim of the petitioner for regularization of the services of the petitioner making specific reference to the opinion of the Supreme Court expressed in the case of **State of Karnataka versus Uma Devi** present at paragraph 44 of the judgment. These are relevant conclusions which binds inter parties and has not been disturbed by the division bench in the intra court appeal preferred by the State as manifest from the order present at Annexure-13, the relevant extract of which are runs as under:

“Feeling aggrieved by the judgment and order dated 30th March 2010 passed by the learned single Judge in above CWJC No. 7766 of 2003 insofar as the learned single Judge has directed, “...**the respondents to initiate civil / criminal proceedings including suspension forthwith of the officer / officers who not only appointed the petitioner whether as a peon / Junior Accounts Clerk / Senior Accounts Clerk but even those successor officer who continued to utilize the service of the petitioner and paid him salary at least till 5.1.2004**”, the respondents State of Bihar and others have preferred this Appeal under Clause 10 of the Letters Patent.

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We do agree with Mr. Lalit Kishore. The illegality of the appointment of the writ petitioner indeed requires to be examined. The officers who may be involved in making illegal / irregular appointment are also required to be dealt with departmentally and also in criminal prosecution. However, there is no justification in issuing direction to suspend and prosecute all those officers who succeeded the



wrong doers in office.

For the aforesaid reasons, the Appeal is allowed. The following order issued by the learned single Judge is set aside.

“Simultaneously, to any such order denying regularization to the petitioner, this Court directs the respondents to initiate civil / criminal proceedings including suspension forthwith of the officer / officers who not only appointed the petitioner whether as a peon / Junior Accounts Clerk / Senior Accounts Clerk but even those successor officer who continued to utilize the service of the petitioner and paid him salary at least till 5.1.2004”

The impugned judgment and order dated 30th March 2010 passed by the learned single Judge stands modified to the above extent.

Interlocutory Application stands disposed of.”

A plain reading of the issue raised by the respondents in the Letters Patent Appeal and the order passed, the relevant extract of which is reproduced hereinabove, would confirm that it is to the limited extent whereby directions was issued by the learned Single Judge to institute Civil and Criminal Proceedings against the officer responsible for the appointment of the petitioner including his promotion and payment of salary that aggrieved, the State chose to prefer the appeal and even though the Division Bench did accept the submission of the learned Advocate General yet the final orders passed in the appeal simply modifies the order of the learned Single Judge to the extent whereby directions were issued to the initiate civil/criminal proceedings against the officers concerned. In other



words, the conclusion drawn by the learned Single Judge upholding the initial appointment of the petitioner as a Peon as well as his promotion to the Accounts clerk was not interfered with rather the judgment and order of the Single Judge stood modified to a limited extent as highlighted hereinabove.

The legal position in this regard is long settled and a judgment of a Court is an authority for what it decides and it is not every observations made by the Court for reaching such conclusion, which constitute a binding precedent nor governs inter party rights.

It is rather peculiar that even though it is the Director, Land Acquisition and Rehabilitation himself who vide order No.123 dated 6.2.1982 appointed the petitioner on ad hoc basis against the post of Junior Accounts Clerk at Annexure-5 accepting the recommendation made by the Rehabilitation Officer, it is the same authority who now proceeds to put the petitioner on notice not only for his initial appointment as Peon but also his appointment as Accounts Clerk inter alia on grounds that the Rehabilitation Officer, Kosi Project had no jurisdiction to make ad hoc appointment as Peon vide order bearing Memo No. 225 dated 09.12.1980 though the said authority admits in his office order dated 21.3.2001 that the Special Land Acquisition Officer was vested with such powers through letter no. 153 dated



18.02.1978 which powers continued until the issuance of the letter No. 7836 dated 02.12.1983. The notice issued by the Director following the orders of this Court at Annexure-14 appears prejudiced from its very subject matter which reads, 'show cause on rejection of regularization'.

Whereas the learned Single Judge had directed the respondents to consider the regularization of the petitioner but he has been put to show cause as to why his prayer should not be rejected. From the very inception the prejudice of the Director is reflecting in the action impugned. Paragraph 6 of the notice again confirms the bias of the Director because while he relies upon the letter dated 11.6.1986 of the Department of Personnel and Administrative Reforms to support his decision that there was a ban on ad hoc appointments, he forgets that the appointment of the petitioner as Peon and subsequently at Junior Accounts Clerk was through letter dated 09.12.1980 of the Rehabilitation Officer at Annexure 1 and 20.10.1981 issued under his own signature at Annexure-2 which was much prior to the ban imposed by the Department of Personnel and Administrative Reforms.

The Director even after noticing that the case of the petitioner had been recommended for promotion as Senior Accounts Clerk by the Establishment Committee, has taken refuge to the vigilance cases



as well as the judgment of the Supreme Court in the case of **Uma Devi** and the judgment of **Siya Ram Chaudhary** (supra) even though, while the judgment in **Uma Devi** had been relied upon by the coordinate bench while accepting the claim of the petitioner in the previous round, in so far as the judgment in **Siya Ram Chaudhary** (supra) is concerned, this was neither referred to earlier nor in view of the inter party judgments staring at the face of the Director, the issue can be reopened.

As noted by me, the notice impugned is not a notice on regularization rather is a notice against termination which jurisdiction was never handed over to the Director under the orders of the learned Single Judge whereby a direction was issued to consider the claim of the petitioner against regularization and not against termination. It is obvious that the Director has proceeded in the matter with the premeditated intention to confirm the earlier termination because even though in the previous round of litigation, the learned Single Judge has found no illegality in the initial appointment of the petitioner as Peon warranting a termination nor the quashing of the termination order has been interfered with by the Division Bench while considering the intra court appeal yet after putting the petitioner on notice, his services has been terminated.



In my opinion the Director was under obligation to consider the regularization of the petitioner on the post of Senior Accounts Clerk in the light of the observations made in the order of writ Court because there was nothing remaining thereafter but to act accordingly. Even if the opinion of the learned Single Judge was modified by the Division Bench in the intra court appeal, it was to a limited extent whereby directions were issued to prosecute the officers responsible.

For the reasons aforementioned, the order dated bearing Memo No. 649 dated 4.4.2013 passed by the Director, Land Acquisition and Rehabilitation, Water Resources Department impugned at Annexure-16 is quashed and set aside. The writ petitioner stands reinstated. The writ petition is allowed with direction to the Director to issue order for regularization in favour of the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
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