

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1351 of 2017

In
Civil Writ Jurisdiction Case No.1516 of 2014

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Sanjay Kumar Pal, Son of Jagdeo Lal, Resident of Miris Kar toli, Police
Station - Alamganj, District Patna

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Home Secretary Home (Police) Department, Government of Bihar, Old
Secretariat, Patna
3. The Director General of Police, Police Head Quarter, Bihar, Patna.
4. The Deputy Inspector General of Police C.I.D. Bihar, Patna.
5. The Deputy Inspector General of Police (Human Resources), Bihar, Patna.
6. The Superintendent of Police (C), C.I.D. Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Md. Waliur Rahman, Advocate Mr. Nishant Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Prashant Kumar Verma -AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-10-2018

1. Feeling aggrieved and dissatisfied with the
impugned judgment and order passed by the learned Single
Judge dated 29.08.2017 in C.W.J.C. No. 1516 of 2014, by
which the learned Single Judge dismissed the said petition, the
original writ-petitioner has preferred the present Letters Patent
Appeal under Clause 10 of the Letters Patent.

2. We have heard learned counsel appearing on



behalf of the respective parties at length.

2.1. At the outset, it is required to be noted that the original writ-petitioner was appointed illegally and by an authority not authorized to appoint and his appointment was considered to be back-door entry. Therefore, after giving an opportunity to the original writ-applicant, his services were terminated in the year 2003. The original writ-petitioner earlier filed C.W.J.C. No. 507 of 2004 before this Court and the learned Single Judge dismissed the said writ petition by observing that considering the law laid down by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs. Umadevi**, reported in (2006) 4 SCC 1 this Court cannot pass any positive orders and further observed that the application of the writ-petitioner has to be considered in terms of the law laid down by the Hon'ble Supreme Court in the aforesaid case. That thereafter, a reasoned order came to be passed rejecting the representation of the original writ-petitioner and, therefore, the original writ-petitioner again approached this Court by way of the present writ petition which came to be dismissed by the learned Single Judge by the impugned order by observing that the second petition for the same relief would not be maintainable and after disposal of the



representation the petitioner does not get any fresh cause of action. For the aforesaid, the learned Single Judge relied upon and considered the decision of the Hon'ble Supreme Court in the case of **Avinash Nagra v. The Navodaya Vidyalaya Samiti** reported in **(1997) 2 SCC 534**. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge, the original writ-petitioner has preferred the present Letters Patent Appeal.

3. Shri Md. Waliur Rahman, learned Advocate appearing on behalf of the original writ-petitioner has vehemently submitted that the learned Single Judge has erred in dismissing the writ petition on the ground that the second petition would not be maintainable in view of the earlier order passed in C.W.J.C. No. 507 of 2004.

3.1. It is further submitted by Shri Md. Waliur Rahman, learned Advocate appearing on behalf of the original writ-petitioner that the learned Single Judge has erred in not properly appreciating that the subsequent petition was on the fresh cause of action challenging the rejection of the representation. It is submitted that therefore, the second petition ought not to have been dismissed on the ground that in



view of the earlier order passed the second petition would not be maintainable.

4. Heard learned counsel appearing on behalf of the respective parties at length.

4.1. At the outset, it is required to be noted that in the earlier round of litigation in C.W.J.C. No. 507 of 2004 the original writ-petitioner challenged his order of termination. The learned Single Judge did not entertain the said writ petition and did not grant any relief on merits by observing that in view of the decision of the Hon'ble Supreme Court in the case of **Umadevi** (supra) the Court is not inclined to pass any positive order. Therefore, the said decision as such was not on merits. However, as the representation of the original writ-petitioner was pending, the learned Single Judge observed that such application/representation was required to be considered and decided by the appropriate authority considering the law laid down by the Hon'ble Supreme Court in the case of **Umadevi** (supra). Thereafter, the representation came to be rejected and thereafter again the writ-petitioner preferred the second petition challenging his earlier order of termination also for which no relief was granted by the learned Single Judge in the earlier



round of litigation. Under the circumstances, the learned Single Judge rightly observed that the rejection of the representation cannot be a ground to file a fresh petition for the same relief which was earlier not granted by the learned Single Judge.

4.2. Even otherwise, it is required to be noted that the appointment of the original writ-petitioner was found to be absolutely illegal and by an authority not competent to make appointment. Therefore also, his termination, which was after hearing the original writ-petitioner, was legal and valid.

5. In view of the above and for the reasons stated above, there is no substance in the present appeal and the same fails and deserves to be dismissed and is accordingly dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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