

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17154 of 2017**

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Ram Kishore Singh Son of Late Bhubneshwar Singh, Resident of Village-  
Govind Pitaujhia, P.O.- Bhadaï, P.S.- Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Primary and Secondary Education, New Secretariat, Patna.
4. The Regional Deputy Director, Tirhut Division, Muzaffarpur.
5. The District Magistrate, Sitamarhi.
6. The District Education Officer, Sitamarhi, District- Sitamarhi.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                 |
|----------------------|---|-------------------------------------------------|
| For the Petitioner/s | : | Mr. Kumod Kumar Shrivastaw<br>Mr.Devendra Kumar |
| For the Respondent/s | : | Mr. Mukund Mohan Jha, AC to GP-27               |

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**CAV JUDGMENT**

**Date : 25-03-2019**

The present writ petition has been filed for setting aside the order dated 12.06.2002, whereby and whereunder the petitioner has been terminated from his services. The petitioner has further prayed for setting aside the order dated 20.09.2006, by which the representation of the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as a clerk by the then Regional Deputy Director of Education, Muzaffarpur on temporary basis from 01.02.1968 to 15.03.1988 in the office of the District



Superintendent of Education, Sitamarhi. Thereafter, the services of the petitioner is said to have been extended from 01.04.1988 to 30.04.1988. Thereupon, the services of the petitioner is said to have been extended up to 31.05.1988 and then up to 30.06.1988.

3. It is the case of the petitioner that the petitioner was reappointed on provisional basis by the District Education Officer, Sitamarhi on 13.02.1989 and finally, the services of the petitioner was terminated by the impugned order dated 12.06.2002, passed by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur on the ground that the prescribed procedure required to be followed for the purposes of making appointment was not followed while making appointment of the petitioner herein nor roaster clearance was taken nor the rules of reservation were followed and further, the appointment of the petitioner was not made by the competent authority, hence, the appointment of the petitioner was illegal and irregular.

4. The aforesaid order of termination was challenged before this Court in C.W.J.C. No. 9256 of 2002 and a coordinate Bench of this Court by an order dated 22.06.2006 had though quashed that part of the impugned order dated 12/14.06.2002 whereby



and whereunder recovery was sought to be made, however, it had not interfered with the order of termination and had remanded the matter to the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to reconsider the matter.

5. The only argument advanced by the learned counsel for the petitioner is that the petitioner could not have been terminated after long continuance in service inasmuch as the validity of the appointment of the petitioner could not have been opened after lapse of more than a decade as has been held by the learned Division Bench of this Court in a judgment reported in **1994 (2) BLJ 499 (Ashok Kumar & Others vs. State of Bihar & Ors.)**.

6. Per contra, the learned counsel for the respondents, referring to the counter affidavit filed on behalf of the Respondent No. 4, has submitted that as per the rules, the Divisional Establishment Committee is the only competent authority to make appointment on the post of clerk for the administrative offices under the jurisdiction of R.D.D.E. i.e. District Education Office, Government Training Colleges, Rajkiye Schools, Block Education Office etc., and that too after following the mandate of Articles 14 and 16 of the Constitution



of India as well as in consonance with the mandatory guidelines of the State Government contained in Circular No. 16440 dated 03.12.1980 issued by the Administrative and Personnel Reforms Department of the Government of Bihar. It is stated that during the course of inquiry, the petitioner could only produce the appointment letter issued by the District Education Officer, Sitamarhi, who is not the competent authority for making such appointment, however, no appointment letter issued by the competent authority i.e. the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, could be produced by the petitioner. It is, thus, submitted that the very appointment of the petitioner is void ab initio and illegal and invalid from the inception. It is further submitted that the prescribed procedure of publishing advertisement, calling for the names of the candidates from the employment exchange and subjecting the petitioner to the selection process was not followed while making the proposed appointment of the petitioner herein.

7. I have heard the learned counsel for the parties and perused the materials on record.

8. From the records, it is absolutely clear that the petitioner has been appointed by the District Education Officer, Sitamarhi by a letter dated 13.02.1989 on an absolutely provisional basis,



only upto the time permanent arrangement is made on the post of clerk and that too without following the procedure provided for in the Government rules / regulations i.e. issuance of advertisement, calling for the names of candidates from the employment exchange, holding the selection process for the purposes of evaluating comparative merit of the candidates etc. as well as de hors the mandate of Articles 14 and 16 of the Constitution of India, hence, the appointment of the petitioner being no appointment in the eyes of law was / is illegal and void ab initio, thus, the petitioner is not entitled to claim the constitutional guarantee given under Article 311 of the Constitution of India. Reliance in this connection be had to a judgment rendered by the Hon'ble Apex Court, reported in *(2004) 2 SCC 105 (R. Vishwanatha Pillai Vs. State of Kerala & Ors.)*.

9. On the aforesaid issue, this Court would gainfully refer to a judgement rendered by the Hon'ble Apex Court, reported in *(2014) 13 SCC 232 (State of Bihar & Others vs. Chandreshwar Pathak)*, paragraph nos. 11, 12 and 13 whereof are reproduced hereinbelow:-

“11. In State of Orissa v. Mamata Mohanty, it was observed as under:(SCC pp. 451-52, paras 35-36)

**Appointment/employment  
advertisement**

**without**



35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of [Article 16](#) should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide: [Delhi Development Horticulture Employees' Union v. Delhi Administration](#), [State of Haryana & Ors. v. Piara Singh](#), [Excise Superintendent v. K.B. N. Visweshwara Rao](#), [Arun Tewari v. Zila Mansavi Shikshak Sangh](#), [Binod Kumar Gupta v. Ram Ashray Mahoto](#), [National Fertilizers Ltd. v. Somvir Singh](#), [Deptt. Of Telecommunications v. Keshab Deb](#), [State of Bihar v. Upendra Narayan Singh](#) and [State of M.P. v. Mohd. Ibrahim](#)).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If



any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Noticeboard etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in [Article 16](#) requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

12. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which SLP has been dismissed by this Court as mentioned earlier.

13. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The learned Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same.”

10. It may be relevant to state that even, the petitioner has not disputed the factum of his appointment being illegal inasmuch as in paragraph no. 9 of the reply filed by the petitioner in the present case, it has been submitted that if, any wrong has been



committed, the same has been done by the appointing authority or any superior authority, hence, the appointee i.e. the petitioner herein cannot be punished. Unfortunately, the law is otherwise and the petitioner cannot be granted benefit in the facts and circumstances of the present case. It is equally a trite law that appointments which are illegal and void ab initio cannot be regularized. Reference in this connection be had to the latest judgment rendered by the Hon'ble Apex Court in the case of ***The State of Bihar Vs. Kirti Narayan Prasad & Other Analogous Cases*** on 30.11.2018, reported in ***2018 SCC Online SC 2615***.

11. Now coming to the argument advanced by the learned counsel for the petitioner to the effect that on account of long continuance of the petitioner in service, the validity of appointment could not have been opened by the respondents after a lapse of more than a decade, hence, the order of termination is fit to be quashed on this ground alone, the answer to the aforesaid issue raised by the learned counsel for the petitioner lies in a judgment rendered by the Hon'ble Apex Court, reported in ***(2007) 5 SCC 336 (Additional General Manager, Human Resources, Bharat Heavy Electrical Limited Vs. Suresh Ramkrishna Borbe)*** wherein the termination of the



incumbent therein from an employment procured by submitting false caste certificate was upheld by the Hon'ble Apex Court, even after the said incumbent had continued in service for a long period of more than two decades. Thus, it is clear that an illegality committed, cannot be permitted to be perpetuated.

Moreover, it is a well settled law that persons appointed by arbitrary procedure cannot challenge the termination of their services on the ground of the same being arbitrary and such persons who come by the back door have to go by the same door.

12. With regard to the aforesaid issue raised by the learned counsel for the petitioner, I would like to refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2005) 4 SCC 209 (Ram Ashray Mahoto & Others vs. Binod Kumar Gupta & Others)**, paragraph no. 13 whereof is reproduced hereinbelow:-

“13. The “advertisement” was no “advertisement” as required by the High Court. Without adequate notice no fair opportunity was given to others who might have applied. Apart from this, it does not appear from the records that there was any selection procedure followed at all. There is no explanation why the Selection Committee had been bypassed nor any acceptable reason why the persons who had applied as far back as in 1986 were ignored. This singular lack of transparency supports the finding of the High Court that the appointments were not made bona fide. The District Judge, who was ultimately responsible for the appointment of Class IV staff violated all norms in making the appointments. It is



regrettable that the instructions of the High Court were disregarded with impunity and a procedure evolved for appointment which cannot be said to be in any way fair or above board. The submission of the appellants that they had been validly appointed is in the circumstances unacceptable. Nor can we accede to their prayer to continue in service. No doubt, at the time of issuance of the notice on the special leave petition, this Court had restrained the termination of services of the appellants. However, having regard to the facts of the case as have emerged, we are of the opinion that this Court cannot be called upon to sustain such an obvious disregard of the law and principles of conduct according to which every judge and anyone connected with the judicial system are required to function. If we allow the appellants to continue in service merely because they have been working in the posts for the last 15 years we would be guilty of condoning a gross irregularity in their initial appointment. The High Court has been more than generous in allowing the appellants to participate in any fresh selection procedure as may be held and in granting a relaxation of the age limit.”

13. Now, coming to the judgment referred to by the learned counsel for the petitioner, rendered in the case of *Ashok Kumar & Others (supra)*, this Court finds that the same is distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the service of the petitioner was regularized by an agreement dated 24.09.1981, which was not disputed by the Government, hence, a learned Division Bench of this Court had held that in view of the admitted agreement entered into between the parties pertaining to regularization of the services of the petitioner therein, the



respondent state authority could not go behind the said agreement and question the initial appointment of the petitioner after twelve years, however, in the present case, the facts are otherwise and in fact, the initial appointment of the petitioner was made only on a provisional basis and that too, up to a period till regular appointment was made and moreover, the services of the petitioner had never been regularized, which is apparent from the fact that the petitioner has failed to bring any order of regularization on the records of the present case, hence, the provisional appointment of the petitioner is not only illegal and a back door entry, but since the appointment of the petitioner had never been regularized, the petitioner has got no indefeasible right to continue in service, thus, the order of termination dated 12.06.2002 as well as the impugned order dated 20.09.2006 passed by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur do not suffer from any infirmity.

14. Before parting, I may hasten to add that the case of the petitioner is not for regularization of his services, but for setting aside the order of termination whereby and whereunder purely provisional and temporary services of the petitioner, made in utter disregard of the law and the prevailing rules/ regulations,



has been rescinded.

15. I may further add here that the present writ petition has been filed belatedly inasmuch as the final order of rejection is dated 20.09.2006, but the present writ petition has been filed only on 21.11.2017.

16. For the reasons mentioned hereinabove, I do not find any merit in the present writ petition, accordingly, the same is dismissed.

**(Mohit Kumar Shah, J)**

ajay gupta/-

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