

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.299 of 2023
In
Civil Writ Jurisdiction Case No.20165 of 2018

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Jyotish Kumar Singh Son of Late Guneshwar Prasad Singh Resident of
Vilalge-Bhikhana, P.S. Rupauli District-Purnea.

... .. Appellant/s

Versus

1. The State of Bihar through its Secretary, Personnel and Administrative Department now Known as Department of General Administration, Government of Bihar, Patna.
2. The Chairman, Bihar Staff Selection Commission, Patna, P.O. Veterinary College, Patna-14.
3. The Secretary, Bihar Staff Selection Commission, Patna, P.O. Veterinary College, Patna-14.
4. The Divisional Commissioner, Saharsa.
5. The District Magistrate, Supaul.
6. The District Development Commissioner, Supaul.
7. The Block development Officer, Raghapur, District-Supaul.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhay Shankar Jha, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Ghosarvai, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 05-03-2024

Heard the parties.

2. By filing the present Letters Patent Appeal, challenge is made to the order of the learned Single Judge dated 02.12.2022, passed in CWJC No. 20165 of 2018, whereby the writ petition came to be dismissed.

3. The writ petitioner-appellant, herein, while assailing the order of the writ Court contended that the case of the writ petitioner was well covered by the judgment rendered



by the Constitution Bench of the Hon'ble Supreme Court in the case of the *Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.*, reported in (2006) 4 SCC 1, as well as the subsequent decision explaining the aforementioned case in *State of Karnataka and Ors. Vs. M. L. Kesari and Ors.*, [(2010) 9 SCC 247].

4. Learned Counsel for the appellant further argued that the writ petitioner-appellant had been continuously working for more than ten years against a vacant post of driver since 13.05.1985 on daily wage basis and, thus his case was to be considered also in terms of resolution contained in Memo No. 639 dated 16.03.2006, however, the learned Single Judge failed to appreciate the aforementioned facts.

5. Having heard the learned Counsel for the parties and after careful consideration of the materials available on record, admittedly, the petitioner-appellant has been working as a daily wage basis, in the meantime, the Government of Bihar had issued notification, incorporating the Bihar Vehicle Driver Regulation, 2005 for appointment of driver under Class III post to be done by the Staff Selection Commission on 30.11.2005.



Pursuant thereto, the District Magistrate, Supaul, vide its Letter No. 14-1/Est. dated 08.11.2006 communicated the Bihar Staff Selection Commission in relation to the vacancies for the post of Jeep driver and further, the name of the petitioner-appellant along with other candidates were also recommended vide Letter No. 494-2/Est. dated 28.06.2007 along with other enclosures. However, having found the petitioner-appellant did not have the required qualification and he failed to submit the update driving license, he was not found entitled to be appointed on Class III post. So far as the claim of the petitioner based upon resolution contained in Memo No. 639 dated 16.03.2006 is concerned, having gone through the same it is manifest that any appointment against the Class III post is to be done by the Bihar Staff Selection Commission, Patna after passing of the examination against the available vacancies is, inter alia, the stipulation therein, which fact has duly been noted by the learned Single Judge.

6. Now coming to the submissions of the petitioner-appellant claiming his case to be covered under the judgment rendered in the case of *Uma Devi* and *M. L. Kesari (supra)* is



concerned, the same is wholly misconceived. The Constitution Bench of the Hon'ble Supreme Court in the case of *Uma Devi (supra)* in no uncertain terms has held that the appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and the Courts cannot direct their absorption, regularisation or re-engagement nor make their service permanent, in exercise the jurisdiction under Article 226 of the Constitution.

7. It is worth noting here that admittedly, the petitioner-appellant was appointed as a daily wager not in terms of any rules or adherence of Articles 14 and 16 of the Constitution and thus, treating the case of the petitioner to be covered even under the exception, as has been duly observed in paragraph 53 of the judgment of *Uma Devi (supra)*, he cannot get any benefit once having found he is not possessing eligible qualification, consequently his claim for appointment has been turned down. The further contention of the petitioner-appellant that his case ought to be considered under the regulation dated 06.03.2016, also does not merit consideration, in view of the clear stipulation made therein that any appointment to the post



of Class III shall be made through the competitive examination to be held by Bihar Staff Selection Commission, having requisite qualification. Furthermore, he was considered, found unqualified and did not even submit a valid driving license, essential for a driver.

8. In view of the aforesaid facts and the circumstances, this Court does not find any merit in the present appeal, the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	NA
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