

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1614 of 2018

In

Civil Writ Jurisdiction Case No.18679 of 2010

=====

Lalan Prasad Rai, S/o Shri Sadhu Sharan Rai, R/o Village & P.O. Silharui,
P.S.-Marhowrah, Dist. Saran (Chapra).

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Personnel Land Administrative Reforms Dept.
Govt. of Bihar, Patna.
3. The Secretary, Cabinet, Govt. of Bihar, Patna.
4. The Principal Secretary, Finance Dept. Govt. of Bihar, Patna.
5. The Principal Secretary, Revenue & Land Reform Dept. Govt. of Bihar,
Patna.
6. The Divisional Commissioner, Saran Division at Chapra.
7. The Collector, Saran at Chapra.
8. The District Magistrate cum Chairman, District Level Appointment
Committee, Saran at Chapra.
9. The Sub Divisional Officer, Marhowrah, Dist.- Saran.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG 3

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-12-2024

The appellant has assailed the order of the learned
Single Judge dated 25.06.2018 passed in CWJC No. 18679 of



2010. The learned Single Judge rejected CWJC No. 18679 of 2010 on the sole ground that appellant had filed CWJC No. 16341 of 2009 and it was dismissed as withdrawn on 08.01.2010 resultantly filing of second CWJC No. 18679 of 2010 amounts to *res judicata* and constructive *res judicata*.

2. Hon'ble Supreme Court has recently held that if petition is dismissed as withdrawn without liberty even in such circumstances litigant is entitled to file fresh litigation and in accordance with law. Therefore, the learned Single Judge has committed error in rejecting the petitioner's writ petition CWJC No. 18679 of 2010 on 25.06.2018.

3. Having regard to the fact that CWJC No. 18679 of 2010 was pending consideration for the last about eight years with reference to its disposal on 25.06.2018 and further present appeal is pending consideration for the last about six years it is not appropriate to remand CWJC No. 18679 of 2010 to the learned Single Judge. On the other hand, we proceed to pass orders on the merits of the case.

4. The appellant is stated to be appointed as Driver on *ad hoc* basis in the year 1994 and he has worked up to 02.02.2007, thereafter, he has invoked certain remedies before various authorities and it was not materialized in his favour resultantly



CWJC No. 16341 of 2009 has been filed and it was withdrawn on 08.01.2010 and subsequent CWJC No. 18679 of 2010. Perusal of the records, it is evident that the official respondents have not taken note of Hon'ble Supreme Court decision in the case of **Secy., State of Karnataka and Others vs. Uma Devi** reported in **(2006) 4 SCC 1** and the principles laid down in such decision so as to ascertain whether appellant is entitled to regularization against Driver post after completion of ten years of service from the date of his initial appointment on *ad hoc* basis in the year, 1994 till 02.02.2007. Consequently, the concerned authority is hereby directed to examine records and grievance of the appellant insofar as regularization of his service to the extent that whether is he fulfilling the relevant criterias narrated in the Hon'ble Supreme Court decision in the case of **Uma Devi** (cited supra) or not read with **Vinod Kumar and Ors. vs. Union of India and Ors.** reported in **(2024) 9 SCC 327**. In this regard, a detailed speaking order shall be passed and communicated to the petitioner within a period of four months from the date of receipt of this order.

5. With the aforesaid observations, the impugned order dated 25.06.2018 passed in writ petition CWJC is set aside. Accordingly, CWJC No. 18679 of 2010 stands allowed. The present Letters Patent Appeal No. 1614 of 2018 stands disposed of.



(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

