

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1154 of 2024

In
Civil Writ Jurisdiction Case No.9047 of 2016

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The State of Bihar through the Principal Secretary, Higher Education, Bihar,
Patna.

... .. Appellant

Versus

1. Ugrasen Jha son of Late Bashishtha Narayan Jha, Resident of Village and Post-Madhepur, Uttarbari Tola, P.S.-Madhepur, District-Madhubani.
2. The L.N. Mithila University Kameshwar Nagar, Darbhanga through the Vice Chancellor.
3. The Vice Chancellor L.N. Mithila University Kameshwarnagar, Darbhanga.
4. The Registrar, L.N. Mithila University Kameshwarnagar, Darbhanga.
5. The Principal, H.P.S. College, Madhepur, District-Madhubani.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Ravi Kumar, AC to AAG-13
For the Pvt. Respondents	:	Ms. Anju Jha, Advocate
For the University	:	Mr. Nadim Seraj, Advocate
		Mr. Iqbal Asif Niazi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RANJAN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 25-06-2026

Heard learned counsel for the parties.

2. The present *intra court* appeal is directed against the judgment and order dated 30.08.2024 passed by the learned Single Judge in C.W.J.C. No.9047 of 2016, whereby the writ petition filed by the writ petitioner (respondent no.1 herein) came to be allowed.



3. The brief facts giving rise to the present appeal are that the writ petitioner (respondent no.1 herein) was appointed as a Counter Clerk on a temporary basis on 10.11.1982 by the Principal of H.P.S. College, Madhepura, in anticipation of creation of the post by the State Government. Thereafter, by letter dated 16.06.1984, the Principal recommended regularization of his services. Reliance was also placed on the State Government notification dated 10.05.1991, whereby persons appointed prior to 10.05.1986, were permitted to continue in service and were to be adjusted against future vacancies. During the period of his engagement, the writ petitioner (respondent no.1 herein) was paid nominal remuneration from time to time for the work performed by him. Subsequently, he was called for an interview on 23.07.1997; however, his services were not regularized. Aggrieved thereby, he instituted the aforesaid writ petition seeking absorption on a Class- III post along with consequential service benefits.

4. Upon considering the pleadings and rival submissions of the parties, the learned Single Judge, by the impugned judgment and order dated 30.08.2024, allowed the writ petition. The operative portion of the said judgment reads as follows:

“14. Upon reading Annexure-3, it appears that the Principal of the College specifically mentioned that the University, vide letter no. 2889-36521 C.D.S., dated 11.02.1981 and 16.02.1981, had recommended for sanction of 31



Class-III and Class-IV posts as per the staffing pattern of the State Government, but the request of the University remained pending before the State Government. The list of employees attached with the letter contains the name of the petitioner as well as the names of similarly situated persons.

15. It is undisputed that the services of four employees, appointed along with the petitioner in similar manner, have been regularized by the respondents on the basis of the decisions of this Court, passed in CWJC Nos. 9215 of 1999 and 20099 of 2016.

16. Annexure-4 is the list of Class-III and Class-IV employees prepared by the College under deemed to be sanctioned as per the staffing pattern and the said list contains the name of the petitioner and other similarly situated employees, who have been regularized pursuant to the orders passed by this Court.

17. Considering the aforesaid facts and circumstances and the fact that the petitioner spent his entire life working in the College and has also attained the age of superannuation, he cannot be denied similar treatment as has been given to the similarly situated Class-III employees pursuant to the orders passed by this Court. The similar benefit must be extended to the petitioner and he cannot be singled out by the respondents.

18. In any case, the petitioner has made out a case of similar treatment as has been given to the similarly situated ClassIII employee appointed in



the similar manner way back in the year 1982, 1983 and 1984 etc. One of the Similarly situated employee, namely, Subhash Chandra Mishra filed a writ application (CWJC No. 20099 of 2016) after the writ application filed by the petitioner and his services has been regularized pursuant to the order passed by this Court.

19. Having considered the aforesaid discussion, this writ application is allowed in similar terms to that of orders, passed in CWJC No.9215 of 1998 and CWJC No. 20099 of 2016. The respondents are directed to pass consequential order and to pay monetary benefits to the petitioner from the date of his initial joining expeditiously within a period of three months from the date of receipt/production of a copy of this order.”

5. Learned counsel appearing for the appellant submits that the writ petitioner himself admitted that he was appointed on a temporary basis against an unsanctioned post. His appointment was made by the Principal of the College, who was not the competent authority to make appointments to Class-III posts under Section 10(6) of the Bihar State Universities Act, 1976.

6. It is further submitted that the appointment was made without any advertisement, open competitive selection or adherence to the mandate of Articles 14 and 16 of the Constitution, rendering the very appointment illegal and void ab initio. It is



argued that the learned Single Judge failed to appreciate the settled principles laid down by the Full Bench of this Court in ***Ram Sewak Yadav v. State of Bihar, 2013 (1) PLJR 964***, governing regularization of illegal appointments.

7. Learned counsel for the appellant further submits that pursuant to the directions issued by this Court in CWJC No. 9809 of 1998 and analogous cases, the writ petitioner was afforded an opportunity to participate in the selection process. Thereafter, 199 temporary employees were considered and 196 were regularized against sanctioned vacant posts after granting due weightage to their temporary service. The writ petitioner was not found eligible for regularization and did not challenge the notification dated 24.02.2005, which has thus attained finality.

8. It is further submitted that the writ petition came to be instituted only in the year 2016, nearly three decades after the alleged appointment and when the petitioner was on the verge of retirement. According to the appellant, such an extraordinary delay itself disentitles the petitioner to any discretionary relief under Article 226 of the Constitution.

9. Learned counsel for the appellant further submits that the learned Single Judge erroneously relied upon the decisions rendered in CWJC No. 9215 of 1998 and CWJC No.20099 of 2016. Those cases, it is argued, related to Lab In-charges who had



been appointed against posts recommended by the University for sanction and whose cases stood on an entirely different footing. The writ petitioner, on the other hand, was appointed as a Counter Clerk against an unsanctioned post, with no recommendation of the University pending before the State Government.

10. Per contra, learned counsel appearing on behalf of respondent no. 1 submits that the impugned judgment does not warrant any interference in the present intra-Court appeal. It is submitted that the learned Single Judge, upon due consideration of the pleadings, the materials brought on record and the applicable legal principles, has rightly allowed the writ petition. It is further submitted that the findings recorded by the learned Single Judge are based on a proper appreciation of the factual and legal aspects of the matter and do not suffer from any error.

11. The limited issue which arises for consideration before this Court is as to whether the learned Single Judge was justified in directing regularization/absorption of respondent no. 1 despite his initial appointment having been made on a temporary basis against an unsanctioned post by an authority allegedly not competent to make such appointment and without following the prescribed recruitment procedure.



12. We have considered the rival submissions advanced on behalf of the parties and carefully perused the materials available on record.

13. The principal contention advanced on behalf of the appellant is that respondent no.1 was appointed against an unsanctioned post by the Principal of the College, who was not competent to make such appointment under the provisions of the Bihar State Universities Act, 1976. It is further submitted that the appointment was made without any advertisement or open competitive selection and, therefore, being contrary to the constitutional mandate contained in Articles 14 and 16 of the Constitution, no right to regularization could accrue in favour of respondent no. 1. In support of the aforesaid submission, reliance has been placed upon the Constitution Bench decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka v. Uma Devi (3)* reported in (2006) 4 SCC 1, and the Full Bench decision of this Court in *Ram Sewak Yadav v. State of Bihar* reported in 2013 (1) PLJR 964.

14. There can be no quarrel with the proposition of law laid down in the aforesaid decisions. The Constitution Bench in *Uma Devi (3) (supra)*, has held that regularization cannot be resorted to as a mode of recruitment and that appointments made in violation of the constitutional scheme of public employment



cannot ordinarily be regularized. The relevant part of the said order reads as follows:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of



employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal



work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it



would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power; that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our



vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

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53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the



courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

15. The Full Bench of this Court in ***Ram Sewak Yadav*** (*supra*), while summarizing the legal position has reiterated that an illegal appointment cannot be regularized, whereas an irregular appointment may be considered for regularization only if the conditions enumerated therein are satisfied. The relevant part of the said order reads as follows:



“We therefore sum up our conclusions and answer the reference as follows: -

A) Uma Devi (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

C) Irregular appointments can be regularised if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.

The petitioners were appointed in temporary capacity by a process contrary to Article 14 of the Constitution without competitive selection as an individual favour doled out to them. There is no material to hold that they were appointed against vacant sanctioned post and possessed qualifications for the same. They were terminated before (Uma Devi) (supra) and have sought to retain their status by virtue of Court proceedings and are therefore not entitled to the benefits of paragraph 53. The issue of any procedural irregularity for a finding of forged appointment is therefore irrelevant.”



16. The applicability of a precedent, however, necessarily depends upon the factual matrix of the case before the Court. A judgment is an authority for what it actually decides and not for what may logically follow therefrom. Therefore, it becomes necessary to examine whether the facts of the present case attract the ratio laid down in the aforesaid decisions.

17. From the materials available on record, it appears that the University, vide its letters dated 11.02.1981 and 16.02.1981, had recommended sanction of thirty-one Class-III and Class-IV posts in accordance with the staffing pattern prescribed by the State Government. Annexure-3 specifically records that although the proposal remained pending before the State Government, the name of respondent no. 1 was included in the list of employees forwarded along with the proposal. Annexure-4 also contains the list of Class-III and Class-IV employees prepared under the staffing pattern, wherein the name of respondent no. 1 finds place.

18. It further appears from the record that several employees whose names formed part of the very same list and whose appointments were made during the same period and under identical circumstances have already been granted regularization pursuant to the judgments rendered by this Court in CWJC No.



9215 of 1999 and CWJC No. 20099 of 2016. The appellants do not dispute the fact that the said judgments have attained finality and have been implemented. Significantly, no material has been brought on record to demonstrate any distinguishing feature between the case of respondent no. 1 and those employees who have already been extended the benefit of regularization.

19. In the aforesaid factual background, the reliance placed by the appellants upon ***Ram Sewak Yadav (supra)*** does not advance their case. The learned Single Judge has not directed regularization solely on the basis of long continuance in service. The impugned judgment proceeds on the finding that respondent no. 1 forms part of the same staffing pattern, his name figures in the same proposal forwarded by the University and, more importantly, employees appointed under identical circumstances have already been granted regularization pursuant to earlier judgments of this Court. Thus, the present case rests on a factual footing materially different from the category of cases which the Full Bench intended to prohibit.

20. The principle of parity also assumes significance in the facts of the present case. The Hon'ble Supreme Court in ***State of Uttar Pradesh v. Arvind Kumar Srivastava reported in (2015) 1 SCC 347***, has held that where relief has been granted to one set of employees and other employees are identically situated, the



State is ordinarily bound to extend the same benefit unless it is able to establish a valid distinguishing feature. The appellants have failed to point out any such distinguishing circumstance in the present case. The relevant part of the said order reads as follows:

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.



22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

21. We also find that the learned Single Judge has recorded a categorical finding that the names of respondent no. 1 and the employees who have already been regularized form part of the same list prepared under the staffing pattern and that respondent no. 1 stands on the same footing as those employees. These findings are borne out from the materials available on record and have not been shown to be either perverse or contrary to the evidence.



22. In such circumstances, once similarly situated employees have been extended the benefit of regularization pursuant to judicial orders which have attained finality and have been implemented by the appellant, respondent no. 1 cannot be denied the same benefit in the absence of any intelligible differentia. To hold otherwise would amount to permitting unequal treatment amongst equals, which is impermissible in law.

23. Accordingly, we find no infirmity in the view taken by the learned Single Judge warranting interference in the present intra-Court appeal. The issue is answered against the appellants.

24. Accordingly, the present appeal stands dismissed.

25. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J.)

(Ranjan Kumar Jha, J.)

*Gaurav Kumar,
Atul/-*

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