

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 397 of 2016

1. Prabhat Kumar Paul son of Bijay Paul, resident of village Lohat, Post Office and Police Station-Kundahit, Jamtara.
2. Asim Kumar Louha son of late Nani Gopal Louha, resident of village Kundahit, Post Office and Police Station-Kundahit, District-Jamtara.
3. Prafulla Kumar Mandal son of late Sudhir Kumar Mandal resident of village Dumra, Post Office-Palajuri and Police Station Kundahit, District-Jamtara.
4. Bagala Prasad Mandal son of Dharani Dhar Mandal resident of village-Bhelua, Post Office Charakmara and Police Station Kundahit, District-Jamtara.
5. Sanatan Tudu son of late Lukhu Tudu, resident of village Hatiapather, Post Office-Bara Gholjore and Police Station-Nala Kundahit, District-Jamtara.
6. Garib Kumar Dewansi son of Sudan Dom resident of village Madhuban, Post Office-Kuldangal and Police Station-Nala Kundahit, District-Jamtara.
7. Hemlal Soren son of Sarkar Soren, resident of village-Sulunga, Post Office-Nagari and Police Station-Kundahit, District-Jamtara.
8. Ajit Kumar Maji son of Balaram Maji resident of village Dumria, Post Office-Monihari and Police Station Nala Kundahit, District-Jamtara.
9. Sukhdev Mandal son of Suchand Mandal, resident of village-Jorkuri, Post Office-Mohnabak and Police Station-Kundahit, District-Jamtara.
10. Dilip Kumar Nag son of Hari Pada Nag, resident of village Bankati, Post Office and Police Station-Kundahit, District-Jamtara.
11. Sunil Kumar Mandal son of Narayan Chandra Mandal, resident of village-Madhuban, Post Office-Kundangal and Post Office-Kundahit, District Jamtara.
12. Swapan Kumar Ghosh son of Late Amulya Ratan Ghosh, resident of village-Sulunga, Post Office Nagari and Police Station-Kundahit, District Jamtara.
13. Gunadhar Mandal son of late Guhiram Mandal, resident of village-Kherbani, Post Office-Kherbani and Police Station-Fatepur, District-Jamtara.
14. Mani Gopal Mandal son of late Prabhakar Mandal, resident of village-Bebarai, Post Office-Kherbani and Police Station-Fatepur, District-Jamtara.
15. Dulal Chandra Mandal son of Sadhu Mandal, resident of village-Amgachi, Post Office-Kairbani and Police Station-Kundahit, District-Jamtara.
16. Jaydeb Rawani son of Rampada Rawani, resident of village-Dalabar, Post Office-Tilabad and Police Station-Kundahit, District-Jamtara.
17. Bishwanath Patar, son of Haradhan Patar, village Majgaria, Post Office Khajuri and Police Station Kundahit, District-Jamtara.
18. Santosh Kumar Mandal son of Sarat Kumar Mandal, resident of village Rasunpur, Post Office-Khajuri and Police Station-Kundahit, District-Jamtara.

19. Subodh Kumar Bharti, son of Basudev Bharti, resident of village-Hariyalmati, Post Office-Bhangahir and Police Station-Kundahit, District-Jamtara.
20. Swapan Kumar Khan son of late Dhirendra Nath Khan resident of village Nagari, Post Office-Nagari and Police Station Kundahit, District-Jamtara.
21. Mamata Khag daughter of Shanti Ram Khag, village Garjuri, Post Office-Palajuri and Police Station-Kundahit, District-Jamtara.
22. Lakhan Chandra Gorain son of Anil Gorain, resident of village Bhangahir, Post Office Palajuri and Police Station-Kundahit, District-Jamtara.
23. Tarunesh Mandal son of Trilochan Mandal, resident of village Dumra, Post Office Palajuri and Police Station-Kundahit, District-Jamtara.
24. Krishna Kishor Mandal son of Bansi Dhar Mandal, resident of village Saluka, Post Office Amba and Police Station-Kundahit, District-Jamtara.
25. Gopal Sarkar son of late Bjhakti Bhusan Sarkar, resident of village Garjuri, Post Office Palajuri and Police Station-Kundahit, District-Jamtara.
26. Munni Kumari Hansda daughter of Lagan Hansda, resident of village-Simaldubi, Post Office-Karaya and Police Station-Nala Kundahit, District-Jamtara.
27. Sudhir Ram Hansda son of Nandi Hansda, resident of village-Lakhiabad, Post Office-Karaya and Police Station-Nala Kundahit, District-Jamtara.
28. Narandra Nath Maji son of Jotindra Nath Maji, resident of village-Bara, Post Office Bara Gholjor and Police Station Nala, District-Jamtara.
29. Sanat Kumar Mandal son of Bhakti Pada Mandal, resident of village-Khajuri, Post Office-Khajuri and Police Station-Kundahit, District-Jamtara.
30. Radha Kanta Ghosh daughter of Hemanta Ghosh, resident of village-Prasadpur, Post Office-Palajuri and Police Station-Kundahit, District-Jamtara.
31. Manik Chandra Mandal son of late Nebaran Mandal, resident of village-Bheladih, Post Office-Babupur and Police Station-Kundahit, District-Jamtara.
32. Raja Ram Murmu son of Darabari Murmu, resident of village Bandardiha, Post Office-Karaya and Police Station-Bindapather, District-Jamtara.

.... Appellants/Petitioners

Versus

1. The State of Jharkhand.
2. The Secretary, Human Resource Development Department, Project Building, Dhurwa, Post Office and Police Station-Dhurwa, District-Ranchi.
3. The Director, Primary Secondary and Mass Education, State of Jharkhand, Project Building, Dhurwa, Post Office and Police Station-Dhurwa, District- Ranchi.
4. The Deputy Commissioner, Dumka, Post Office and Police Station-Dumka, District-Dumka.

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5. The Deputy Commissioner, Jamtara, Post Office and Police Station-Jamtara, District-Jamtara.

6. The Sub-Divisional Education Officer, Jamtara. Post Office and Police Station-Jamtara, District-Jamtara.

7. The Sub-Divisional Education Officer, Dumka, Post Office and Police Station-Dumka, District-Dumka.

....Respondents

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Appellants : M/s Arshad Hussain, Haider Ali, Advocates

For the Respondents : Mr. Binod Singh, S.C.(L&C)

13/Dated: 31st October, 2017

Oral order:

Per D.N. Patel, A.C.J.:

1. This Letters Patent Appeal has been preferred by the original petitioners, being aggrieved and feeling dissatisfied, by the judgment and order delivered by the learned Single Judge in W.P.(S) No. 2728 of 2016 dated 28th July, 2016, whereby, the prayer for regularisation in the services as Non-Formal Education Instructors has been rejected and hence, the original petitioners have preferred the present Letters Patent Appeal.

2. Having heard counsels for both the sides and looking to the facts and circumstances of the case, it appears that these appellants are heavily relying upon the decision rendered by the Hon'ble Patna High Court in writ petition being C.W.J.C. No. 8418 of 2010 which was confirmed in L.P.A. No. 1489 of 2011. It is submitted by the counsel for the appellants that these appellants are out of job from year, 2001 onwards and they have put several years of services and hence, they should be regularised in the services of Non-Formal Education Instructors. These aspects of the matter have not been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by these appellants and hence, the said judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

Reasons:

3. Having heard counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:

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(i) These appellants are out of job from the year 2001 and the writ petition has been preferred in the year, 2016. There is a long delay in preferring the writ petition and there is no explanation for this delay.

(ii) It further appears from the facts of the case that heavy reliance is placed upon the order passed by the Hon'ble Patna High Court in similarly situated cases viz. C.W.J.C. No. 8418 of 2010, for regularisation of services.

This contention is not accepted by this Court mainly for the reason that arising out of the aforesaid decision of the Hon'ble Patna High Court, ultimately, the matter has been reached upto the Hon'ble Supreme Court and it has been observed by the Hon'ble Supreme Court in S.L.P.(C) No. 32079 of 2015 in order dated 26th February, 2016 as under:

“We find no infirmity in the order impugned herein. The Special Leave Petitions are dismissed.

The relief granted by the High Court shall be restricted to those who approached the High Court who were heard as well as who wanted to get themselves impleaded and those who have filed applications here at par with those former as well as all those petitioner Instructors which are pending as on date before the High Court but shall not apply to any fresh case either here or before the High Court.

Pending applications, if any, stands disposed of.”

(Emphasis supplied)

In view of the aforesaid observations, no fresh claim can be entertained. Thus, it appears that as one time measurement the regularisation has been accepted by the Hon'ble Supreme Court in a matter arising out of writ petition being C.W.J.C. No. 8418 of 2010.

(iii) It further appears that every now and then regularisation cannot be permitted otherwise, it will tantamount to allowing the back door entry or illegal appointees to be converted into legal appointees. It has become fashion in the State that those who are adorning the higher administrative posts, they are appointing the employees on the public posts without following, due procedure or without following the rules and without inviting applications from the public at large. Such type of back door entrants remains in the

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job for few years and thereafter they claim regularisation in the services.

(iv) It has been held by Hon'ble Supreme in the case of **M.P. State Agro Industries Development Corpn. Ltd. And another v. S.C. Pandey** reported in (2006) 2 SCC 716 especially in paragraph no. 17 as under:

“17. The question raised in this appeal is now covered by a decision of this Court in *M.P. Housing Board v. Manoj Shrivastava* wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service; (4) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.”

(Emphasis supplied)

(v) It has been held by the Hon'ble Supreme Court in the case of **Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and others** reported in (2007) 6 SCC 207 especially in paragraph no. 18 as under:

“18. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularisation in service. In *Madhyamik Shiksha Parishad v. Anil Kumar Mishra* it was held that the completion of 240 days' work does not confer the right to regularisation under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In *M.P. Housing Board v. Manoj Shrivastava* (para 17) after referring to several earlier decisions it has been reiterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. This view has been reiterated in *Gangadhar Pillai v. Siemens Ltd.* The same question has been examined in considerable detail with reference to an employee working in a government company in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* and paras 34 and 35 of the Report are being reproduced below: (SCC p. 426)

“34. Thus, it is well settled that there is no right vested in any daily wager to seek regularisation. Regularisation can only be done in accordance with the rules and not dehors the rules. In the case of *E. Ramakrishnan v. State of Kerala*

this Court held that there can be no regularisation dehors the rules. The same view was taken in *Kishore (Dr.) v. State of Maharashtra* and *Union of India v. Bishamber Dutt*. The direction issued by the Services Tribunal for regularising the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In *Surinder Singh Jamwal (Dr.) v. State of J&K* it was held that ad hoc appointment does not give any right for regularisation as regularisation is governed by the statutory rules.

(Emphasis supplied)

(vi) It has been held by the Hon'ble Supreme Court in the case of **Mohd. Ashif and others Vs. State of Bihar and Others** reported in (2010) 5 SCC 475 especially in paragraph nos. 13 and 14 as under:

“13. Applying the test laid down by this Court in *Umadevi (3)* case and the cases referred to above, to the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of other candidates eligible for appointments against the posts to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs 50 only.

14. The High Court has, in our opinion, correctly held that there was no cadre of Voluntary Health Workers who were working on an honorarium in State-run dispensaries. The very nature of the appointment given to the appellants as Voluntary Health Workers was honorary in nature which entitled them to the payment of not more than Rs 50 per month. It is difficult to appreciate how the Chief Medical Officer could have regularised/absorbed such Voluntary Health Workers doing honorary service against the post of Primary Health Workers which carried a regular pay scale and which could be filled only in accordance with the procedure prescribed for that purpose. The appointment of the appellants against the said posts was thus manifestly illegal and wholly undeserved to say the least. Inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed. The High Court was, in that view of the matter, justified in declining interference with the order of cancellation and dismissing the writ petitions.”

(Emphasis supplied)

(vii) In view of the aforesaid decisions, the regularisation in the services of back door entrants i.e. those who are appointed without

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any public advertisement cannot be done. Even otherwise also, these appellants are out of job from the year 2001, as submitted by the counsel for the appellants and the writ petition has been preferred after more than one dozen years. There is a gross unexplained delay.

4. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this Letters Patent Appeal and no error has been committed by the learned Single Judge while deciding W.P.(S) No.2728 of 2016 vide judgment and order dated 28th July, 2016. Hence, this Letters Patent Appeal is hereby, dismissed.

(D.N. Patel, A.C.J.)

(Ratnaker Bhengra, J.)

VK/NAFR