

---

**(2018) 06 JH CK 0095**

**In the Jharkhand High Court**

**Case No : Letters Patent Appeal No.292 of 2015**

Vice President

APPELLANT

Vs

Project Officer

RESPONDENT

---

**Date of Decision : 28-06-2018**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15, 16, 19, 21, 162

**Citation : (2018) 06 JH CK 0095**

**Hon'ble Judges : AMITAV K. GUPTA, J;D.N. PATEL, J**

**Bench : Division Bench**

**Advocate : Kalyan Roy, Amit Kumar Das, Pooja Kumari**

**Final Decision : Dismissed**

---

## **Judgement**

D.N. Patel, A.C.J

1. This Letters Patent Appeal has been preferred by the appellant (original petitioner) whose writ petition being W.P.(L) No.5479 of 2014 was

dismissed by the learned Single Judge vide judgment and order dated 30th March, 2015 and hence, the appellant (original petitioner) has preferred this

Letters Patent Appeal.

2. Prayer for regularisation into the services of the respondent-Public Sector Undertaking was not accepted by the Central Government Industrial

Tribunal No.-II, Dhanbad in Reference Case No.13, 14 and 15 of 2007. The award was passed by the Central Government Industrial Tribunal No.-II,

Dhanbad on 15th March, 2013 which was upheld by the learned Single Judge in the writ petition being W.P.(L) No.5479 of 2014 dated 30th March,

2015 and hence, the appellant (original petitioner) has preferred this Letters Patent Appeal.

3. Having heard counsels for both the sides and looking to the facts and circumstances of the case, it appears that the terms of reference under

Section 10 of the Industrial Disputes Act in all the three references was for regularisation of the services of the members of this appellant.

4. The main contention raised by the counsel for the appellant is that the employees of the contractor who were working since several years for the respondent-management ought to have been regularised by the Industrial Tribunal. This aspect of the matter has not been properly appreciated by the learned Single Judge, and hence, the judgment and order delivered by the learned Single Judge deserved to be quashed and set aside.

5. We are not accepting this contention mainly for the reason that they were the employees of the contractor and even if these persons have worked for 240 days or more, they are not entitled for regularisation. There was no direct supervision and control of the management upon the employees of the contractor.

6. The test to be applied in such type of cases is supervision and control and not the payment of salary nor the maintenance of the attendance register etc. It ought to be kept in mind that maintenance of attendance register is not a test to be applied for regularisation. Even if such type of registers are being maintained by the respondent, the same are maintained only for payment of money to the contractor, for monitoring the work done by contractor and the time consumed by him and nothing beyond that.

7. In the case of *Madhyamik Shiksha Parishad v. Anil Kumar Mishra* reported in (2005) 5 SCC 122 Hon'ble the Supreme Court has held as under:

“5. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days’ work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days’ work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the

service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here.â?? (emphasis supplied)

8. In the case of M.P. Housing Board v. Manoj Shrivastava reported in (2006) 2 SCC 702 Hon'ble the Supreme Court has held as under:

â??17. It is now 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. (See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra; Executive Engineer, ZP Engineering Divn. v. Digambara Rao; Dhampur

Sugar Mills Ltd. v. Bhola Singh; Manager, Reserve Bank of India v. S. Mani and Neeraj Awasthi.)â??Â Â Â Â Â (emphasis supplied)

9. In the case of Hindustan Aeronautics Ltd. v. Dan Bahadur Singh reported in (2007) 6 SCC 207 Hon'ble the Supreme Court has held as under:

â??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 daysâ?? 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)

â??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 Â v. State of Kerala this Court held that there can be no regularisation dehors

the rules. The same view was taken in Kishore (Dr.) Â v. State of Maharashtra and Union of India Â 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)

10. In view of the aforesaid decisions, even if the workers of the contractor have worked for more than 240 days, they cannot be regularised into the services of the principal employer. At the most, they can be regularised into the services of the contractor and not with the principal employer. This distinction has been properly appreciated by the Industrial Tribunal as well as by the learned Single Judge.

11. It appears that this appellant is a chance taking petitioner. Admittedly, the workers of the contractors, even if they have worked for more

than 240 days, they are never entitled for any regularisation into the services of the principal employer. Who is maintaining the attendance register

need not to be looked into which is heavily argued by the learned counsel for the appellant. 12. Learned counsel appearing for the appellant has placed

reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Gangadhar Pillai Vrs. Siemens Ltd.* reported in (2007) 1 SCC 533.

This judgment is of no help to the present appellant. On the contrary it helps the respondent. 240 days is not a magical bond which convert workers of

the contractor into regular workmen of the principal employer. Work of 240 days or more than 240 days by the workers of the contractor have nothing

to do with, the regularisation of their services with the principal employer. If such type of back door entrants are allowed, it will tantamount to Article

14 and 16 of the Constitution of India for getting public employment. Things which cannot be done directly can never be done indirectly. The

respondent is a public sector undertaking. For getting public employment, public at large must be given an opportunity to compete for the public post.

Public advertisement is must. If these type of contractor's employees are allowed to be regularised, in the employment in public undertakings, they will

get public posts, without advertisement.

13. In the case of *Nagendra Chandra Vrs. State of Jharkhand* reported in (2008) 1 SCC 798 Hon'ble the Supreme Court has held as under:

9. In view of the foregoing discussion, we have no option but to hold that if an appointment is made in infraction of the recruitment rules, the same

would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled.â?? (emphasis supplied)

14. In the case of Mohd. Ashif Vrs. State of Bihar reported in (2010) 5 SCC 475 Hon'ble the Supreme Court has held as under:

â??13. Applying the test laid down Â 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.â??Â (emphasis supplied)

15. In the case of State of Bihar Vrs. Chandreshwar Pathak reported in (2014) 13 SCC 232 Hon'ble the Supreme Court has held as under:

â??10. The order of appointment, in the present case, is as follows:

â??In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No. 6/86 F3

Shri Chandeshwar Pathak, s/o Shri Devnarayam Pathak of Village Haraji, PO Haraji, PS Dimbara, District Chhapra was appointed as Constable

temporarily from 14-1-1988 afternoon on the condition that his previous character found satisfactory and as and when necessary, his service shall be

terminated without assigning any reason or show cause. His pay scale shall be Rs 425-10,565 EB-10-605 with the basic pay of Rs 425. He has been

allotted CT No. 390.â??

It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show

that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment

of the respondent.

11. In *State of Orissa v. Mamata Mohanty*, it was observed as under: (SCC pp. 451-52, paras 35-36) â??Appointment/employment without

advertisement

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 Employeesâ?? Union v. Delhi Admn., State of*

*Haryana v. Piara Singh, Excise Supt. 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 with 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.â??

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.â?? (emphasis supplied)

Â 16. In the case of Renu Vrs. District & Sessions Judge reported in (2014) 14 SCC 50 Hon'ble the Supreme Court has held as under:

â??6. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.

7. In I.R. Coelho v. State of T.N., the doctrine of basic features has been explained by this Court as under: (SCC p. 108, para 141)

â??141. The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read

with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution.

Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the

Constitution as indicated by the synoptic view of the rights in Part III.â??

8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in

violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments

rendered by this Court in Delhi Development Horticulture Employeesâ?? Union Â v. Delhi Admn. Â , State of Haryana Â v. Piara Singh , Prabhat

Kumar Sharma Â v. State of U.P. Â , J.A.S. Inter College Â v.State of Â U.P. , M.P. Housing Board Â v. Manoj Shrivastava Â ,M.P. State Agro

Industries Development Corpn. Ltd. Â v. S.C. Pandey Â and State of M.P. Â v.Sandhya Tomar.

11. In UPSC v. Girish Jayanti Lal Vaghela this Court held: (SCC p. 490, para 12)

â??12. â?| The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from

eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a

written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the

advertisement made â?| Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from

eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee

enshrined under Article 16 of the Constitution.â?? (emphasis supplied)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram

Yadav as under: (SCC pp. 274-75, para 24)

â??(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or

inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and

other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.



(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.â??

13. A similar view has been reiterated by the Constitution Bench of this Court in *State of Karnataka v. Umadevi* (3), observing that any appointment

made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. â??Adherence to Articles 14

and 16 of the Constitution is a must in the process of public employment.â? The Court further rejected the prayer that ad hoc appointees working for

long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the

cost of many waiting to compete.â??Â (emphasis supplied)

17. In view of the aforesaid decisions, without there being any public advertisement and without giving an opportunity to the public at large to compete

for the post in question, no public employment could have been given to anyone. If the contractor's employees are regularised into the services of the

public sector, it will tantamount to regularisation of services, of back door entrants without there being any public advertisement. These aspects of the

matters have been properly appreciated by the learned Single Judge while deciding the writ petition being W.P.(L) No.5479 of 2014 dated 30th March,

2015.

18. There is no substance in this Letters Patent Appeal and accordingly this Letters Patent Appeal is, hereby, dismissed with a cost of Rs.15000/-

(rupees fifteen thousand) which will be deposited by the appellant (original

petitioner) before the Secretary, Department of Women & Child

Development and Social Welfare, Government of Jharkhand, Ranchi towards Juvenile Justice Fund. This amount will be deposited in the Bank

Account No.3734498462-5, Jharkhand Juvenile Justice Fund, State Bank of India, Project Bhawan, Hatia, Ranchi, either by cheque or bank draft,

within a period of six weeks from today. This amount shall be utilised for the welfare of the juveniles, as per the duties assigned to the State under the

Juvenile Justice Act.

19. Copy of this order will be sent to:

(a) the Secretary, Department of Women & Child Development and Social Welfare, Government of Jharkhand, Ranchi;

(b) the Member Secretary, Jharkhand State Legal Services Authority, Nyay Sadan, Doranda, Ranchi.

20. This Letters Patent Appeal is, hereby, dismissed with cost.