

Patna High Court - Orders

The State Of Bihar & Ors vs Subodh Kumar on 20 July, 2011

IN THE HIGH COURT OF JUDICATURE AT PATNA
LPA No.1699 of 2010

1. The State Of Bihar
 2. The Secretary Health Department, Bihar, Patna
 3. The Director-In-Chief Health Services, Bihar, Patna
 4. The Civil Surgeon-Cum-Chief Medical Officer, Araria
 5. The In-Charge Medical Officer Primary Health Centre, Jokihat, Distt.- Purnea
- Versus
1. Subodh Kumar S/O Sri Vishwanath Prasad R/O Vill.-Karmatard, P.S.- Jamtara, Distt.- Dumka, Presently Residing At Jokihat, P.S.- Jokihat, Distt.- Purnea
-

03/ 20th July 2011 This Letters Patent Appeal has been filed against the Judgment passed on 06.10.2009 by the learned Single Judge in C.W.J.C. No. 1281 of 2009, by which the learned Single Judge has set aside the termination order relying on the case of Secretary, State of Karnataka Vs. Uma Devi and Ors. reported in 2006(2)P.L.J.R.(SC)363, and considered by the Apex Court in the case of State of Karnataka & Ors Vs. M.L. Kesari & Ors. reported in (2010) 9 SCC 247. In paragraph 11 of the Judgment, the Apex Court has observed as follows:-

"The object behind the said direction in para 53 of Umadevi is two fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of court or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily wage/ ad hoc/ casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.04.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification are entitled to be considered for regularization.

The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above direction in Umadevi as a one time measure."

In view of the above law laid down, the order of termination of the petitioners is illegal. Admittedly, the petitioners have completed more than ten years of their service, and have completed about 10 years of service as against the vacant post, appointed by the competent authority and were paid salary and were also given promotion after regularization of service and confirmation. Their appointments cannot be said to be illegal, which differ from irregular appointment. The appointment of the petitioners also cannot be said to be irregular and as per law laid down in Uma

Devi Case in para 53 and M.L. Keshri's case. The petitioners were fully entitled for regularization of his service, therefore, their termination is bad in law.

The learned Single Judge has rightly allowed the writ petition and set aside the termination order. The petitioners shall be reinstated forthwith and salary shall be paid month to month regularly and arrears of salary shall be paid within four months. We fully agree with the Judgment of the learned Single Judge. For the reasons recorded above, the appeal is devoid of merit.

Accordingly, this L.P.A. is dismissed.

(Prakash Chandra Verma, J.) (Aditya Kumar Trivedi, J.) perwez