

Mritunjay Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-12-2006

Judge : J.N. Bhatt, C.J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 5154 of 2000

Appellant : Mritunjay Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Anjani Kumar Sharan, S.C.

Advocate for Pet/Ap. : Arun Kumar Tiwari, Adv.

Disposition : Petition dismissed

Judgement :

J.N. Bhatt, C.J.

1. Upon a Joint request of learned Counsels for the parties the matter is taken up for final hearing today.
2. In this petition under Article 226 of the [Constitution of India](#), the petitioner has sought a direction against the respondents authorities to confirm him and regularise his services on the post of Chaukidar as he is working on the said post

as a substitute Chaukidar. It is his case that he is discharging his duty as a Chaukidar with effect from 15.3.1991 and, therefore, he is entitled to be regularised in the service. A counter affidavit on behalf of respondent No. 4 is filed, as well as, a supplementary affidavit on behalf of the petitioner is, also, filed. Learned Counsels for the parties are heard and the affidavits are, also, considered.

3. It is very clear from the record that there is no any appointment order in favour of the petitioner as a substitute Chaukidar. It is an admitted fact, also. The only contention which is advanced before this Court is that as he is working as a substitute Chaukidar in the Police Station since 1991 his services should be regularised and confirmed.

4. It is very clear from the affidavit in reply filed by respondent authority that the so-called appointment as a substitute Chaukidar was never made by the appointing authority. No such advertisement was ever given. No such post was, also, fell vacant. Therefore, it is the case of the respondent authority that the petition is totally without any substance and not maintainable.

5. The petitioner has not been able to place anything on record that his appointment was by the appointing authority. He has not produced the appointment letter. What is the period during which he was directed to work as a substitute Chaukidar and what was the amount he was entitled to be paid, no particulars in this regard are submitted by any party. Apart from that a substitute Chaukidar cannot claim regularisation or confirmation in the service even if he is appointed by the appointing authority. Of course, so is not the position in the present case. When a person is appointed dehors the service rules and regulations, no regularisation or confirmation can be granted, and that too, under the writ jurisdiction by invocation of the provision of Article 226 of the [Constitution of India](#). This proposition of law is very well settled.

6. In the latest Constitution Bench decision of the Hon'ble Supreme Court rendered in the matter of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. : (2006)IILLJ722SC this proposition of law is very well explained, elucidated and expounded and the proposition of law propounded in this decision is squarely

attracted to the facts of the present case and, therefore, the petitioner has no right to claim regularisation. The petition, therefore, deserves to be dismissed.

7. However, learned Counsel for the petitioner stated that on sympathetic ground the representation filed by the petitioner is required to be considered or he would like to make a fresh representation for consideration on sympathetic ground. It is for the petitioner to make such a representation and if such a representation is made it is for the Government to consider.

8. With the aforesaid observation, this petition shall stand dismissed without any order as to costs.

9. Rule is discharged.

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