

ITEM NO.103

COURT NO.11

REVISED

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9891/2010

ARBIND KUMAR

Appellant(s)

VERSUS

STATE OF JHARKHAND & ORS.

Respondent(s)

WITH

C.A. No. 9892/2010

(With Interim Relief and Office Report)

Date : 05/10/2016 These appeal were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

In C.A.9891/10

Mr. Dushyant Parashar, Adv.
Dr. Kailash Chand, Adv.

In C.A.9892/10

Mr. J.S. Attri, Sr. Adv.
Mr. Manoj Saxena, Adv.
Dr. Kailash Chand, Adv.

For Respondent(s)

Mr. Gopal Singh, Adv.
Mr. Shivam Singh, Adv.Mr. Krishnanand Pandeya, Adv.
Ms. Rita Kumari Gupta, Adv.
Mr. Shashank Singh, Adv.

Mr. Manish Kumar Saran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(NEELAM GULATI)
COURT MASTER

(MADHU NARULA)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9891 OF 2010

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O R D E R

We have heard learned counsel for the respective parties. Although basic question of law is common in both the appeals, there are some variations in the facts and wherever relevant the said differences will be pointed out.

For the sake of convenience, we are taking the facts from C.A. No. 9891 of 2010. The appellant - Arbind Kumar was appointed as a Constable in Dhanbad District on 31st March, 1998. There is no dispute

that the provisions in the Police Manual for such appointment were not followed and without inviting applications from the eligible persons, appellant's case for appointment was allegedly recommended by the Superintendent of Police, Dhanbad to the Director General cum Inspector General of Police (Welfare) Bihar Patna (DG cum IG), on the ground that father of the appellant was an Assistant Sub Inspector of police and had met with an accident on 2nd August, 1997 and sustained injuries leading to amputation of right leg. It is not in dispute that father of the appellant continued to serve the police force till he superannuated sometime in 2005.

So far as the two appellants in the other appeal i.e. C.A. No. 9892 of 2010, are concerned, they claim to be brave persons who helped the police against the naxalites and as a result, both of them were recommended for appointment by the then Superintendent of Police, Dhanbad to the DG cum IG, Bihar, Patna and after their cases were cleared by the DG cum IG, they were appointed as constables on 16th October, 1996.

The appellants underwent training and began working as constables. When the fact of such appointments made without adhering to the provisions in the Police Manual came to light, the Home Secretary, Government of Bihar issued a Communication in September, 2000 to issue notice to persons appointed in such manner against law and to cancel such appointments if they were so found. As a result of such exercise, the service of the appellants came to be terminated in 2002 and 2003. The termination was after serving show cause notice on the simple ground that the appointments were made through a process unknown to law and in total disregard of the relevant provisions in the Police Manual. Some controversy was raised as to whether show cause notice was served on the appellant-Arbind Kumar but it has been pointed out that his show cause as well as the notice is annexed as Annexure P-6.

On behalf of the Arbind Kumar, reliance has been placed on a judgment of this Court in the case of Arjun Kumar Rout & Ors. vs. State of Bihar & Ors. 1998 (9) SCC 71, whereby this Court in the peculiar

facts of that case directed for framing a scheme for absorption/regularisation of the appointees who were working as temporary or adhoc for a long number of years. The judgment itself makes it clear that the order was passed under Article 142 of the Constitution of India with a specific observation that it shall not be treated as a precedent. Hence, we are not persuaded to follow that course of action in the present case. Although the appellants have pleaded that they are mere victims of irregular or illegal action by the concerned police officials who appointed them to the post of Constable without following the procedure prescribed under the Police Manual and hence deserve sympathy, but we are not persuaded to accept such submission. In our considered view, the beneficiaries cannot blame the appointing authority alone and claim that the illegal appointment should be continued in perpetuity. To accept such plea would amount to giving premium to dishonest and illegal acts in matters of public appointments.

The appellants were terminated as soon as Authorities came to know of such illegal

appointments. They had not completed even ten years so as to perhaps raise a claim for one time consideration for regularisation in terms of judgment of the Constitution Bench in Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors. (2006)4 SCC 1. In the facts of the case, we find no merit in these appeals, they are accordingly dismissed. There shall be no order as to costs.

.....J
(SHIVA KIRTI SINGH)

.....J
(R. BANUMATHI)

NEW DELHI
October 05, 2016

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