

(2009) 08 PAT CK 0005

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 13908 of 2005

The Union of India
(UOI)

APPELLANT

Vs

Shailendra Kumar Sao
and The Registrar,
Central Administrative
Tribunal, Patna Bench

RESPONDENT

Date of Decision: Aug. 4, 2009

Final Decision: Allowed

Judgement

S.K. Katriar and J. Saran, JJ.

This writ petition is directed against the order dated 8.4.2004 (Anexure-2), passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 524 of 2002 (Shri Shailendra Kumar v. Union of India and Anr.), whereby the order dated 9.5.2001, passed by the authorities has been set aside and they have been directed to allow the applicant (respondent No. 1 herein) to complete his training course for the remainder period of Probationary Junior Telecom Officer. The writ petition is further directed against the order dated 17.1.2005 (Annexure-3), passed by the learned Tribunal in R.A. No. 34 of 2004 (Bharat Sanchar Nigam Limited, Bihar Circle, Patna v. Sri Shailendra Kumar), whereby the Corporation's review application has been rejected.

2. A brief statement of facts essential for the disposal of the writ petition may be indicated. Jalandhar Sao, the father of respondent No. 1 herein, was in the Corporation's employment. He died on 21.2.1977, while posted as a Draftsman. The Corporation took up the cause of the widow and offered to her an employment in the Corporation which she declined, inter-alia, on the ground that her son (respondent No. 1 herein) was still a student of Class IX and his case may be considered after he is of age. Respondent No. 1 completed his studies, acquired Diploma in engineering and had perhaps stood first in the examination. He thereafter filed application dated 24.12.1986, seeking employment on

compassionate ground. The Corporation passed order dated 25.11.1988, whereby it had offered employment to respondent No. 1 herein as a daily wager, and he started working as such. This was followed by order dated 8.10.1991, whereby a number of persons, who were working as casual mazdoors, were appointed as Junior Telecom Officer. It involved training covering a period of 16 weeks. The training of respondent No. 1 commenced on 12.10.1992, which he discontinued with effect from 28.12.1992 for the reason that he was implicated in a dowry-related prosecution. He was granted bail on 5.3.1993. Soon thereafter he reported for training but was not allowed to join leading to O.A. No. 281 of 1996. During the pendency of the original application, he was acquitted by the learned trial court by judgment dated 27.5.1998. O.A. No. 281 of 1996 was disposed of by order dated 11.10.2000, whereby the Corporation was directed to conduct an enquiry to consider the case of the applicant (respondent No. 1 herein) and pass a final order. It appears from a perusal of the order that the respondent authorities had, inter alia, raised objection before the learned Tribunal that the appointment of respondent No. 1 was liable to be cancelled because his mother, at the time of his father's demise, was working as Headmistress in a Government school and drawing Rs. 12,000/- per month approximately, and respondent No. 1 had obtained appointment on compassionate ground that none in the family was employed.

3. The Corporation conducted the enquiry and by order dated 9.5.2001 (Annexure-1), disposed of the application of respondent No. 1 for his continuance in service, whereby it was held that the mother of respondent No. 1 was employed as a school teacher at the time of the demise of his father and continued to be employed till the date of the order. The Corporation also found that respondent No. 1 has suppressed this material fact in his application for appointment on compassionate ground. The enquiry committee comprised of the following functionaries.

1. Shri R.K. Bhatia, CGMT, Chairman
Patna
2. Shri Ram Yagya, GM (D), Member
C.O., Patna.
3. Shri J. Bhakat, GM (O), Member
C.O., Patna.
4. Shri M. Hanumantha Rao, Member &
DGM (Admn), C.O., Patna. Co-ordinator

4. Aggrieved by the said order dated 9.5.2001 (Annexure-1), respondent No. 1 preferred the said O.A. No. 524 of 2002, which has been allowed by the impugned order. The Corporation thereafter filed a review application bearing R.A.- 34 of 2004, raising the question that the Corporation was not within the jurisdiction of the

Tribunal and, therefore, the said order dated 8.4.2004 (Annexure-2), whereby O.A. No. 524 of 2002 was allowed, may be recalled as being wholly without jurisdiction. The Corporation had raised the preliminary objection in the review application that the Corporation was beyond the Tribunal's jurisdiction and, therefore, an O.A. seeking relief against the Corporation was not maintainable. The review application was dismissed by order dated 17.1.2005, on the ground that this point not taken in O.A. No. 524 of 2002, and cannot, therefore, be permitted to be raised after disposal of the same, and impugned herein. Hence this writ petition, challenging both the orders.

5. While assailing the validity of the impugned orders, the learned Advocate General submits that the applicant (respondent No. 1 herein) had suppressed the material facts in his application seeking appointment on compassionate ground that his mother was employed. He next submits that had the Corporation been aware of the factual position, it would not have given appointment to respondent No. 1 on compassionate ground as a daily-wager. He lastly submits that respondent No. 1 is not otherwise also entitled to appointment on compassionate ground.

6. Learned Counsel for respondent No. 1 submits that the writ petition is confined to the question of maintainability of the original application before the Tribunal. In his submission, neither O.A. No. 281 of 1996, nor O.A. No. 524 of 2002, was maintainable before the Tribunal, because the Corporation was not within the sweep of the Tribunal's jurisdiction on the date the same were filed, or on the dates the same were disposed of. He, therefore, submits that, in view of the frame of the writ petition confining it to the sole question of maintainability of the original application, he is in no position to answer the issues of facts. He next submits that the Tribunal has been vested with the jurisdiction to adjudicate disputes against the Corporation with effect from 10.11.2008. He submits in the alternative that, if the writ petition is found to be maintainable, the impugned order(s) may be set aside and the matter may be remitted to the learned Tribunal for a fresh decision in accordance with law.

7. The learned Advocate General in reply submits that the Tribunal disposed of both the original applications unmindful of the question whether or not it had the jurisdiction over the Corporation. In his submission, the Tribunal has examined all issues of facts and law and, therefore, there is no necessity to remit the matter back to the learned Tribunal. This Court may examine the matter on merits to save time and further harassment to the parties as well as the Courts.

8. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We would first of all deal with the question of maintainability of this writ petition. It is correct to state that the Corporation was not within the jurisdiction of the Tribunal on the dates of institution of the two original applications, nor even on the dates of their disposal. It was so brought within the jurisdiction of the Tribunal with effect from 10.11.2008, vide notification published in

the Gazette of India, Extraordinary, Part-II, dated 31.10.2008, notwithstanding which the Tribunal had proceeded with the disposal of the original application on merits. The parties are also to be blamed, perhaps more because there is no material on record to show that they had brought this legal position to the notice of the Tribunal.

9. Learned Counsel for respondent No. 1 further submits that the present writ petition has to be adjudicated keeping in view the frame of the writ petition which is confined to the maintainability of O.A., and facts have not been pleaded in this writ petition setting up any challenge to the merits of this matter. It appears to us that the present respondent No. 1 was applicant in O.A. No. 524 of 2002, and, therefore, it was he who had approached the Tribunal with the original application. The question of maintainability of the original application was not raised by the parties after disposal of the original application. We are mindful of the legal position that in case of inherent lack of jurisdiction, consent of the parties cannot confer jurisdiction. The present case is seemingly covered by this principle of law. As indicated hereinabove, the Tribunal assumed jurisdiction over the affairs of the Corporation with effect from 10.11.2008. This, however, does not conclude the matter. We are reminded of the judgment of the Supreme Court in [Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another](#), That was a case under the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972. The learned first authority passed an order on merits. The aggrieved party had moved the learned District Judge who, in his turn, disposed of the matter on merits. The aggrieved party moved the Allahabad High Court and assailed the validity of the order of the learned District Judge on the grounds that there is no provision of appeal under the Act, and the learned District Judge does not at all figure in the Act. The Allahabad High Court found the submission to be correct, but proceeded further to examine the matter on merits, rather than set aside the order of the learned District Judge as being without jurisdiction. The aggrieved party moved the Supreme Court and the judgment of the High Court has been upheld. The Supreme Court held that it is open to the High Court in exercise of its discretionary, prerogative writ jurisdiction to examine the order of the learned District Judge on merits and passed an order on its own merits. It is open to the High Court to adopt the order of the learned District Judge as its own order.

10. One of us (S.K. Katriar, J.) had the occasion to apply the aforesaid principle of law in *Sri Prakash Singh and Anr. v. State of Bihar and Ors.* reported in (2002) 1 B.L.J.R. 600. We are mindful of the position that the same was rendered by a Single Judge. However, the same was disposed of, and the observations made therein were, entirely based on the judgments of Supreme Court and a Division Bench of this Court. That was a case where the learned Collector of the District had passed the order under the Bihar and Orissa Public Demands Recovery Act in exercise of his power of review. This Court had on application of the principles of law enunciated in *Mohammad Swalleh v. Third Additional District Judge* (supra), as well as other

judgments of the Supreme Court, observed that the learned Collector of the District had undoubtedly exceeded his jurisdiction in passing the impugned order in exercise of review jurisdiction. He was nevertheless vested with the powers of review under the Act, and had acted in excess of it. In that view of the matter, the writ petition was considered on merits and the order of the learned Collector was found to be valid, and was adopted by the High Court as its own order.

11. Applying this principle of law to the facts and circumstances of the present case, we are of the view that the Tribunal did not have the jurisdiction to entertain and dispose of O.A. No. 281 of 1996, as well as O.A. No. 524 of 2002. Indeed the present O.A. No. 524 of 2002 is a sequel to previous one.

12. In that view of the matter, we do not wish to dispose of the writ petition on the ground that the Tribunal did not have the jurisdiction to adjudicate and dispose of the matter with respect to the affairs of the Corporation. We shall dispose of the writ petition on the basis of the limited materials available on record and on merits. We must at the outset confess that we are faced with difficulties in disposing of the matter on merits. The petitioners have challenged the order in O.A. No. 524 of 2002, without placing on record the requisite factual materials to enable us to adjudicate the core of the dispute and, as has been rightly submitted by learned Counsel for respondent No. 1, he was precluded from filing an effective counter affidavit on facts. In view of the frame of the writ petition, he is indeed not required to file counter affidavit on merits. We also in this connection note the submission of the learned junior counsel for the petitioners (the Corporation) that the original records submitted by them before the Tribunal were not returned to them and is untraceable in the Tribunal. We must make it clear that we would not allow the cause of justice to be defeated by such problems, shall not allow the wrong to triumph, and the right to be worsted. In view of these limitations, we are confined to the limited materials on record including the order of the Tribunal in O.A. No. 281 of 1996, the order dated 9.5.2001, passed by the Corporation in obedience to the order of the tribunal, and the order passed on O.A. No. 524 of 2002. Any situation of difficulties with respect to issues of facts will operate against the petitioners.

13. We feel unhappy at the incoherent judgment of the Tribunal. If that were not so, the task of this Court would have been lighter. Amidst the narrow scope of scrutiny presented before us for our consideration, the over-arching reality is that the mother of respondent No. 1 was, on the date of his father's demise and on all the three dates on which O.A. No. 281 of 1996, O.A. No. 524 of 2002, and R.A. No. 34 of 2004 were disposed of, occupied a civil post and was Headmistress in a Government school. We are indeed very sorry to note that the Tribunal has not cared to note the date of demise of the late employee. He was Jalandhar Sao, who was a draftsman in the services of the Government of India, and died on 21.2.1977, while still in harness. The writ petitioners showed to the widow compassion of a nature we do not normally come across at the hands of such departments. It had on its own

offered a job to the widow on compassionate ground which she declined without disclosing the reason that she was already employed in Government service. She instead disclosed the reason that her son (respondent No. 1 herein) was a student of Class IX, and opportunity may be given to her to set-up her son's claim for appointment on compassionate ground when the occasion arises. In that view of the matter, the writ petitioners passed order dated 13.12.1978, whereby suo-motu offer of appointment on compassionate ground was recalled.

14. It appears from the limited materials available before us that respondent No. 1 in the meanwhile acquired the Diploma in Engineering and had perhaps topped the list of the successful candidates. He, therefore, submitted his application dated 24.12.1986, recalling the sad event of his father's pre-mature demise coupled with his mother's letter for consideration of his case at the appropriate occasion, and requested for his appointment on compassionate ground. The Corporation passed order dated 25.11.1988, whereby respondent No. 1 was appointed as a daily-wager. He continued as such, and was towards the end of 1991 offered the substantive position of Junior Telecom Officer. His training covered a period of 16 weeks which had commenced on 12.10.1992.

15. A little more than two months after commencement of training, respondent No. 1 was visited with an unexpected event which proved to be his undoing. He was at the instance of his wife implicated in a dowry-related case in which he was taken into custody, as a result of which his training was discontinued. He was granted bail by order dated 5.3.1993, and he promptly reported for training. The corporation declined to accept his joining which led to O.A. No. 281 of 1996. The same was disposed of by order dated 11.10.2000, whereby the petitioners (the Corporation) were directed to constitute a Circle Selection Committee or a High Power Committee, variously described in its pleadings to examine the entire matter on merits and in the light of the observations in the Tribunal's order. A perusal of the order makes it abundantly clear that the department's main contention before the Tribunal was that the present respondent No. 1 had misrepresented before the authorities about his mother's employment, as a result of which he was initially given appointment on daily-wages and his substantive appointment was a sequel to the same. We would like to quote hereinbelow some of the relevant portions of the order dated 11.10.2000 to establish that the main discussion before the Tribunal, and the main reason for its remand to the departmental authorities, was confined to the ground of incorrectness or suppression of the material fact at the relevant point of time. The Tribunal observed as follows in paragraph 5 of the order dated 11.10.2000:

...Pursuant to the aforesaid order of this Tribunal (Annexure R/2) what has happened now that the respondents have raised an issue afresh contending, inter-alia, that the applicant's selection for appointment as Junior Telecom Officer was liable to be cancelled for the reason that he furnished false information and

misrepresented his case with regard to the financial condition of the family and that, whereas, his mother was already posted as Head Mistress in a Government school, drawing approximately Rs. 12,000/- per month as salary, he (the applicant) misrepresented his case by asserting that no one in the family was having any employment. Be it recorded here that the respondents no more emphasise the ground of the pendency of the criminal case for not reinstating him to the training course....

After noting the submissions of the parties, the Tribunal proceeded to direct the department as follows:

...The point of enquiry would be whether, at the time of selection the applicant misrepresented certain facts by way of non-disclosure or concealment of the fact asked for. The appointment of applicant's mother to the post of Head Mistress if made subsequent to the selection of the applicant on compassionate grounds, may not, however, be very much relevant, inasmuch as, the indigent condition of the family has to be considered with reference to the period when the selection was actually made....

16. It, therefore, follows from a plain reading of the order of the learned Tribunal of 11.10.2000, passed in O.A. No. 281 of 1996, that the main question for consideration for the departmental committee was whether or not the mother of respondent No. 1 was gainfully employed, and whether or not she had misrepresented or suppressed the fact, at the relevant point of time. It is further evident that the learned Tribunal, and very rightly, completely ignored the involvement of respondent No. 1 in the criminal case because it had ultimately resulted in his acquittal.

17. In our view, it is further evident that the Tribunal passed a just and proper order so that the issue in controversy may be effectively thrashed by the High Power Committee, as it has described itself in its order dated 9.5.2001 (Annexure-1). The entire text of the Committee's order is reproduced hereinbelow for the facility of quick reference:

In continuation of this office letter cited above, it is intimated that the High Power Committee comprising of the following Officers met on 13.3.2001 and 20.4.2001 to consider the case of your appointment on compassionate ground.

- | | |
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| 1. Shri R.K. Bhatia, CGMT,
Patna | Chairman |
| 2. Shri Ram Yagya, GM (D),
C.O., Patna. | Member |
| 3. Shri J. Bhakat, GM (O);
C.O., Patna. | Member |

4. Shri M. Hanumantha Rao,
DGM (Admn), C.O., Patna.

Member &
Co-ordinator

The High Power Committee examined the affidavits submitted by you and your mother Smt. Madhuri Devi (Madhuri Kumari), W/o Late Jalandhar Sao and the relevant records relating to your compassionate appointment in the light of Hon"ble CAT, Patna Bench judgment dated 11.10.2000 in O.A. No. 281/96, to ascertain whether Shri Shailendra Kumar, at the time of his application for appointment and selection, has misrepresented certain facts by way of nondisclosure or concealment of the fact asked for, i.e. relating to his mother"s employment, for the sake of obtaining appointment on compassionate ground.

The HPC on examination of the record relating to your application for appointment on compassionate ground, representation of Smt. Madhuri Kumari dated NIL, received in this office on 31.5.1988 your affidavit dated 13.2.2001 and affidavit of Smt. Madhuri Devi dated 13.2.2001, found that Shri Shailendra Kumar at the time of his application for compassionate ground appointment has shown Smt. Madhuri Kumari, W/o Late Jalandhar Sao as not employed and also as dependent on Shri Shailendra Kumar whereas the affidavits dated 13.2.2001 from Smt. Madhuri Kumari and Shri Shailendra Kumar confirmed that Smt. Madhuri Kumari was employed as a teacher both at the time of death of her husband Shri Jalandhar Sao and also at the time of application for compassionate ground appointment by Shri Shailendra Kumar. Hence the fact that Shri Shailendra Kumar at the time of his application and selection for compassionate ground appointment has misrepresented certain points i.e. relating to his mother"s employment as teacher by showing her as not employed, has been established beyond doubt and as such, his concealment of the above facts disqualify him for Government Service. The HPC, therefore, rejected the case of compassionate ground appointment of Shri Shailendra Kumar, S/o Late Jalandhar Sao.

Sd/

(R.K. Bhatia)

Chief General Manager

Bihar Telecom Circle, Patna.

(Emphasis added)

The order of the High Power Committee is one of the materials before us to be taken into account for adjudication of the dispute.

18. Respondent No. 1 challenged the said order dated 9.5.2001 (Annexure-1), in O.A. No. 524 of 2002. The Tribunal in the impugned order has found as follows with respect to the core of the dispute:

25. After going through the original form filled up by the applicant particularly, columns 4 & 5, it is found that the column 4 relates to the brief particulars of liabilities, if any, wherein, the applicant has filled up the particulars as "wife of the deceased has one married son and two minor daughters". Column 5 of the said form is with regard to particulars of the members of the employee, but in Hindi the same column says as under:

deZpkjh ds IHkh vkfJrks dk fooj.k @;fn bues ls dqN fu;qDr gS rks mudh vk; vkSj D;k os "kkfey :i esa vFkok vyx jgrs gSA

In other words, the admitted position is that the mother of respondent No. 1 was in the service of the Bihar Government at the time of the unfortunate demise of her husband, at the time the department had made voluntary offer of appointment to her on compassionate ground, at the time respondent No. 1 herein had submitted application for appointment on that ground leading to his engagement on daily wages, and also at the time of his appointment on substantive basis. Equally admitted position is that respondent No. 1 had also suppressed the material fact at all relevant points of time that his mother was gainfully employed. Are we permitted to note in the absence of the mother of respondent No. 1 that she had declined the department's offer for appointment on compassionate ground, not on the ground that she was gainfully employed, but because of her son was not of age?

19. In this background of admitted position emerging from the materials on record, we are left in no doubt that had respondent No. 1 represented the correct state of affairs before the authorities about his mother's employment, the department could not have offered to him the employment on daily-wages, and his substantive appointment was really a sequel to the same. We have, therefore, no hesitation in concluding that respondent No. 1 misled the authorities by his wilful suppression of facts in believing that the entire family was left high and dry in life on account of pre-mature demise of the bread-winner of the family.

20. This has to be considered from another angle also. The employee died on 21.2.1977, and respondent No. 1 had submitted his application for appointment on compassionate ground on 24.12.1986. Can a post be reserved for a ward for a period of nine years? Law is well-settled that appointment on compassionate ground is permissible only the Rules or the policy decision of the employer permits the same, and meant to meet the immediate problems of the family on account of the demise of the bread-winner of the family while still in harness. The Supreme Court has observed as follows in [Sanjay Kumar Vs. The State of Bihar and Others](#), paragraph 3 of which is reproduced hereinbelow for the facility of quick reference:

3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in

penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

21. The judgment of the Supreme Court in [State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir](#), is also relevant in the present case. That was a case where the appointment on compassionate ground had been made after four and half years of the death of the father. The Supreme Court has held that it was impermissible on account of such lapse of time. That was a case where four and half years had lapsed. Nine years have lapsed in the present case coupled with the admitted position that the mother of respondent No. 1 was gainfully employed. It should not be taken to be an expression of the views of the Court whether or not compassionate appointment can be declined even if the employer is purposely or otherwise responsible for the delay.

22. Law is well-settled by a long line cases of high authority that courts have always set their faces against appointment on compassionate ground, and can be permitted only if the Rules or the policy decision permit. Law is equally well settled that public employment in this Country is a national wealth and every citizen should have unrestricted access to the same which is possible only if the vacancies are publicly advertised and given wide publicity. The appointment on compassionate ground has, therefore, been held by the Courts to be a back-door entry which results in deprivation of consideration of the body of eligible citizens. Another facet of the same matter is that law presumes that its very aim and object is to provide immediate succour to the family in a situation when it is over-taken by emergency. Law, therefore, presumes that if such an appointment has not taken place immediately after the demise of the employee while still in harness, the needs of the family has been taken care of. Considerations may perhaps be different if the delay has occurred for reasons entirely attributable to the authorities. Another important aspect of the matter is that the appointment on compassionate ground is allowed only to the families who have been left in indigent circumstances. Therefore, the economic condition of the family at the time of demise of the employee is a very important factor. If the authorities come to the conclusion on facts that the family is possessed of reasonable means of survival, then it will be open to them to decline appointment.

23. Applying these well-settled principles of law to the facts and circumstances of the present case, it is evident that the mother of respondent No. 1 was Headmistress in a Government school. Secondly, the employment on daily-wages

was offered to respondent No. 1 nine years after the demise of her father which was obtained by suppressing the material fact that his mother was gainfully employed. As stated hereinabove, we are convinced that had the respondent authorities been aware of the employment of the mother of respondent No. 1, they would have declined employment. This also explains the lapse of nine years whereafter the employment was offered to the son and should not be taken to be a case of condonation of delay, and indeed was a case of deception. The judgment of the Court of Appeal in England in *Lazarus Estates, Ltd. v. Beasley* 1956 (1) All E LR 341 is relevant in the present context. Speaking for the Court Lord Denning, the distinguished Master of Rolls, observed as follows:

No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, *Collins v. Balantern* (1767) (2) W. K.B. 342 as to judgments, *Duchess of Kingston's Case* (3) (1776) (1 Leach 146) and, as to contracts, *Master v. Miller* (4) (1791) (4 Term Rep. 320). So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it.

24. We must also consider another aspect of the matter. Whether or not an extra dose of compassion is required to be injected in cases of compassionate appointment? The employee left behind his widow, one son, and two unmarried daughters. Should we, therefore, ignore the error of suppression of material fact and reinstate respondent No. 1? The issue has kept us wavering and it is difficult to take a view with any amount of confidence. We are, however, reminded of the well-established principle of law that the discretionary, prerogative writ jurisdiction is never exercised in favour of persons who have obtained the benefit in an illegal manner by misleading the authorities. After all what would be the protection to the Government and authorities against the wrong-doings of the citizen. Respondent No. 1 has after all engaged the Government for 23 years in this protracted litigation.

25. Sentiment is dangerous guide in judicial proceedings, and should not be allowed to deflect the course of justice. We are in this connection reminded of the judgment dated 4.4.2007 of a Single Judge of this Court in [Ram Dhani Singh Vs. The State of Bihar and Others](#) wherein this proposition of law was elaborately discussed. We are mindful of the position that the same was the judgment of a learned Single Judge. However, the observations therein were entirely based on the judgments of the Supreme Court and one judgment of the Court of Appeal in England. The relevant portion of the judgment is reproduced hereinbelow for the facility of quick reference:

18. Reference may also be made to the Constitution Bench judgment of the Supreme Court in [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), which dealt with the question of regularisation of back-door entrants in Government service. Their Lordships quoted with approval the observations of Farwell, L.J. in *Latham v. Ricahard Johnson & Nephew Ltd.* (discussed in paragraph 19 hereinbelow). The same was also quoted with approval by the Supreme Court in its judgment in the case of [A. Umarani Vs. Registrar, Cooperative Societies and Others](#), Paragraph 36 of the judgment in *Uma Devi* (supra) is setout hereinbelow for the facility of quick reference:

36. This Court also quoted with approval (at SCC p.131, para 69) the observations of this Court in *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh* to the effect: (SCC p. 144 para 36)

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

This decision kept in mind the distinction between "regularisation" and "permanency", and laid down that regularisation is not and cannot be the mode of recruitment by any State. It also held that regularisation cannot give permanence to an employee whose services are ad hoc in nature.

19. Reference may be made to the judgment of the Court of Appeal in England in the case of *Latham v. Johnson & Nephew* reported in 1911 13 All E.R. 117. The defendants were the owners of a piece of unfenced waste ground, on which to their knowledge and with their permission children had been in the habit of playing. Early one morning a heap of stones was deposited on the land by the defendants' servants, and soon after, while on the land alone, the plaintiff, a child under three years of age, was injured by one of the stones falling on her hand. In an action brought on behalf of the plaintiff for damages for his injury, it was held that the defendants were not liable. It was further held that

...we must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles....

26. In the result, we allow this writ petition, and set aside the judgment dated 8.4.2004 (Annexure-2), passed in O.A. No. 524 of 2002. In view of the position that we have disposed of the matter on merits, the order dated 17.1.2005 passed in R.A. No. 34 of 2004 is also set aside.

27. In the circumstances of the case, however, there shall be no order as to costs.