

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1673 of 2010

IN

Civil Writ Jurisdiction Case No 11067 of 2009

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1. The State Of Bihar, Through the Chief Secretary Government of Bihar, Patna
 2. The Chief Secretary Government of Bihar, Patna
 3. The Commissioner-Cum-Secretary, Health Department Government Of Bihar, Patna
 4. The Director-In-Chief, Health Services Government of Bihar, Patna
 5. The Joint Director, Department Of Health Government of Bihar, Patna
 6. The Deputy Director, Department Of Health Government of Bihar, Patna
 7. The Civil Surgeon-Cum-Chief Medical Officer Katihar
 8. The Civil Surgeon-Cum-Chief Medical Officer Ranchi
 9. The Medical Officer Incharge, Primary Health Centre Amdabad, Katihar
- =====

.... Appellant/s

Versus

Ajay Kumar S/O Late Shiv Nandan Prasad Sah R/O Moh Purab Sarai, P.S.Munger,
Distt-Munger

.... Respondent/s

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For the Appellant/s : Mr Sudhir Kumar, AC to AAG2

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 20-03-2015

Inspite of notices including notice being published in newspapers, the sole respondent has chosen not to appear.

2 We have heard learned counsel for the State. Delay in filing the appeal is condoned.

3 We have heard the learned counsel for the State on the merits of the appeal. In our view, the appeal has to be allowed.

4 The sole respondent claimed to be appointed in the

Health Department as a “Dresser” which is a Class III post. He was transferred from one station to another till it was discovered that he had no valid appointment. It is not a case of irregular appointment. The authorities found that there were no recruitment process and the appointment letter, as produced by him, was a forged letter. Accordingly, after due notice to him and enquiry in the matter, he was terminated.

5 Without noticing these salient facts, the learned Single Judge allowed his writ petition merely referring to earlier decided cases wherein different categories of employees had come, some who were irregularly appointed, some whose appointments, though irregular, were on sanctioned post, some, who had been wrongly regularized and some whose appointments had been found based on forged documents. In those cases, upon appreciation of individual facts, the order of termination was set aside. The learned Single Judge did not go into the facts of this case. The facts are eloquent. We may only add that once there is an allegation that the appointment is based upon forged appointment letter then the onus shifts on the employee to show that he was appointed after due advertisement, selection process, on sanctioned vacant post and by competent authority. In other words, it is open to the employee to show as to the fact that he was validly and legally appointed. In the

present case, all that the employee is able to show is an appointment letter. How he was appointed, what was the selection process is not at all stated. The Court was confronted with the appointment letter alone which the State disputed as genuine. In that situation and in such disputed questions of fact, in our view, the learned Single Judge ought not to have interfered with.

6 Accordingly, this appeal is allowed and the judgment and order of the learned Single dated 27.10.2009 passed in CWJC No 1067 of 2009 is set aside.

(Navaniti Prasad Singh, J)

M.E.H./-

(Jitendra Mohan Sharma, J)

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