

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19173 of 2012

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Ramesh Kumar Singh Son Of Late Shiv Dayal Singh Resident Of Village-
Madhurapur, P.S. Biddupur, District- Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Health,
Government Of Bihar, Patna
2. The Director-In-Chief, Health Services, Government Of Bihar, Patna
3. The Regional Deputy Director, Health Services, Tirhut Division, Muzaffarpur
4. The Civil Surgeon-Cum-Chief Medical Officer, Vaishali At Hajipur
5. The Additional Chief Medical Officer, Vaishali At Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Adv.

For the Respondent/s : Mr. Lalit Kishor, PAAG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 03- 04 - 2015

In this writ application, the prayer of the petitioner reads
as follows:-

- "1. That the present application is for issuance of a writ in the nature of writ of certiorari for quashing the Judgment dated 04.11.2011 passed in case No. 30/2010 by the one man enquiry committee as contained in Annexure-16, whereby and whereunder the application filed by the petitioner has been rejected. And further a writ in the nature of writ of mandamus directing the respondent authorities to reinstate the petitioner on the post on which he was working before termination of his service with all the salary and other consequential benefits in accordance with law, in light of the recommendation made by the subsequent enquiry committee."



2. The relevant facts giving rise to this writ application lies in a narrow compass. The petitioner, in the writ application, has claimed to have been appointed on 21.10.1982 on the post of Clerk under the order of the Regional Deputy Director of Health Services, Tirhut Division, Muzaffarpur and his such services were terminated on 25.7.2003 by the Civil Surgeon cum Chief Medical Officer, Vaishali. The petitioner claims to have filed a writ application, CWJC No. 7522 of 2003 assailing his aforesaid order of termination which was allowed by this Court by a judgment dated 8.9.2003 along with large number of other similar cases in the case of *Sitendra Kumar Singh Vs. State of Bihar & Ors.* reported in **2003(4)PLJR 282**.

3. As against the aforesaid judgment, the State of Bihar had preferred a large number of appeals including LPA No. 224 of 2004 and all such appeals were disposed of by a common order dated 26.6.2006 in the case of **State of Bihar Vs. Purendra Sulan Kit** reported in **2006(3) PLJR 386** with a direction to the authorities of the Department to re-consider the case of all the affected persons for their regularization in service in terms of the judgment of the Apex Court in the case of *Secretary, State of Karnataka & Ors. Vs. Uma Devi* (3) reported in **2006(4) SCC 1**. It is the further case of the petitioner that when in terms of the aforesaid order of the Division Bench in the case of *Purendra Sulan Kit (supra)*, the necessary decision for regularization

of service of the petitioner was not taken, he had filed another writ application, CWJC No. 1115 of 2008 which was disposed of on 9.7.2008 with a direction to the respondents to consider the case of the petitioner in the light of the order of the Division Bench within a period of five months.

4. The petitioner claims that thereafter on 27.8.2008, he was informed that his services were declared to be illegal and he again had moved this Court by filing a writ application, CWJC No. 6664 of 2009 which was allowed by this Court on 6.10.2009 with a large number of similar cases which has also been reported in the case of *Om Prakash Vs. The State of Bihar & Ors.* reported in **2009(4) PLJR 690**. According to the petitioner, the State had however filed an appeal L.P.A. No. 16 of 2010 against the aforesaid decision of the learned Single Judge dated 6.10.2009 and that appeal along with a number of similar cases were referred to One Man Committee of Hon'ble Mr. Justice Uday Sinha, a retired judge of this Court, to adjudicate the legality of the appointment of the petitioner and others by a common order in the case of **Sohan Roy Vs. State of Bihar and others** reported in **2010(2) PLJR 397** whereafter he had appeared before the One Man Enquiry Committee of Hon'ble Justice Uday Sinha and the impugned order dated 4.11.2011 has been passed by Hon'ble Justice Uday Sinha holding the appointment to be illegal.



5. Assailing the aforesaid order, Mr. Banwari Sharma, learned counsel for the petitioner, has submitted that the One Man Committee of Hon'ble Justice Uday Sinha has committed an error in holding the appointment of the petitioner to be illegal primarily on the ground that it was made by an incompetent authority. He, however, has concentrated on the aspect that while the petitioner has been subjected to termination of service after his admitted continuance for a period more than 21 years, persons similarly situated alike him were retained in service under the order of the State Government pursuant to the order passed in the case of Purendra Sulan Kit (supra). He has also referred to certain orders passed by One Man Enquiry Committee of justice Uday Sinha to contend that the few persons alike him were given relief of declaration of their appointment to be legal and thus reinstatement in service.

6. Learned counsel for the State, on the other hand, has submitted that the appointment of the petitioner was made without following the prescribed procedure of advertisement and selection. He has then submitted that the appointment of the petitioner being in teeth of Article 14 of the Constitution of India had never conferred any right to him. In this regard, he relied on the order of termination of service of the petitioner on 25.7.2003 as contained in Annexure-4.

7. In the considered opinion of this Court, it is the order

dated 25.7.2003 which will unveil the nature of appointment of the petitioner which reads as follows:-

“कार्यालय असैनिक शल्य चिकित्सक सह
मुख्य चिकित्सा पदाधिकारी, वैशाली । हाजीपुर।

आदेश

मुख्य सचिव बिहार पटना के पत्रांक 696 ।22। दिनांक 19.6.99, 746 दि० 9.7.02 एवं आयुक्त एवं सचिव स्वास्थ्य विभाग बिहार पटना के पत्रांक 1307 ।4। दि० 5.11.02 एवं 97 ।4। दि० 30.8.02 के निदेश के आलोक में श्री रत्नेश कुमार सिंह लिपिक अपर मुख्य चिकित्सा पदाधिकारी कार्यालय वैशाली से ज्ञापांक 359 दि० 8.2.03 एवं 1408 दि० 21.6.03 से कारण पृच्छा की गयी। श्री सिंह जांच हेतु 18.2.03 को उपस्थित हुए तथा विज्ञापन, साक्षात्कार एवं चयन समिति की प्रक्रिया संबंधी कोई अभिलेख प्रस्तुत नहीं किये।

पुनः 19.6.03 को जांच समिति के समक्ष उपस्थित हुए परन्तु कोई भी अभिलेख विज्ञापन, साक्षात्कार, चयन समिति की प्रक्रिया आरक्षण नियमों के पालन करने संबंधी को प्रस्तुत नहीं किये।

अतः रत्नेश प्रसाद सिंह, लिपिक अवर मुख्य चिकित्सा पदाधिकारी कार्यालय वैशाली की सेवा में अनियमित मानते हुए उनकी सेवा समाप्त की जाती है। दि० 25.7.03 से सेवा समाप्त की जाती है।

ह०/—

असैनिक शल्य चिकित्सक सह

मुख्य चिकित्सा पदाधिकारी, वैशाली।

ज्ञापांक 1749 दिनांक 25.7.03”

8. It has to be noted that the aforesaid order dated 25.7.2003 was passed after a show-cause notice and affording an opportunity of hearing to the petitioner and since the petitioner had failed to produce either the copy of the advertisement or passing in interview or his case being processed by any selection committee, that by itself will go to show that the appointment of the petitioner claimed to be made on the basis of a notice pasted on notice board was void ab

initio. This aspect of the matter has been not only finally adjudicated in the case of Uma Devi (supra) but also thereafter in the case of *State of Orissa & Anr. Vs. Mamata Mohanty* reported in 2011(3)SCC 436 wherein it was held as follows:-

"Appointment/employment without advertisement

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide *Delhi Development Horticulture Employees' Union v. Delhi Admn.* [(1992) 4 SCC 99], *State of Haryana v. Piara Singh* [(1992)4 SCC 118, *Excise Supt. V. K.B.N. Vishweshwara Rao* [(1996) 6 SCC 216], *Arun Tewari v. Zila Mansavi Shikshak Sangh* [(1998) 2 SCC 332], *Binod Kumar Gupta v. Ram Ashray Mahoto* [(2005) 4 SCC 209], *National Fertilizers Ltd. v. Somvir Singh* [(2006) 5 SCC 493], *Deptt. Of Telecommunications v. Keshab Deb* [(2008)8 SCC 402], *State of Bihar v. Upendra Narayan Singh* [(2009)5 SCC 65 and *State of M.P. v. Mohd. Abraham*.[2009]15 SCC 214])

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is



made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Article 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

(Underlining for emphasis)

9. It is true that the order of termination of service of the petitioner dated 25.7.2003 was held to be bad under the order of learned Single Judge in the case of Sitendra Kumar Singh (supra) but, then, the appeal was carried against the aforesaid order and that was disposed of with by a division bench of this Court in the light of consent of the parties in the judgment of Purendra Sulan Kit (supra) whereby and whereunder the entire matter was remanded for reconsideration for the purpose of regularization of service in the light of the observation made in the case of Uma Devi (supra). The ultimate conclusion of the Committee constituted by Health Department upon remand by this Court was that the appointment of the petitioner was illegal. It is this finding which was successfully assailed by the petitioner before learned Single Judge in the case of Om Prakash

(supra) but even then that judgment of learned Single Judge was not approved by the Division Bench and the matter was remitted to the One Man Enquiry Committee headed by Hon'ble Justice Uday Sinha.

10. The plea of learned counsel for the petitioner that the petitioner had never given consent for his case being sent to One Man Committee of Hon'ble Mr. Justice Uday Sinha will have also no relevance because against the order of the Division Bench remitting the matter to the One Man Committee, the petitioner had moved the Apex Court in Civil Appeal No. 6487 of 2011 (arising out of SLP(C) No. 20293/2010) and the same was dismissed by an order dated 8.8.2011, which for the sake of clarity and convenience is quoted hereinbelow:-

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6487 OF 2011

[Arising out of SLP(C) No. 20293/2010]

Ratnesh Kumar Singh Appellant

Versus

State of Bihar & Ors. Respondents

WITH

CIVIL APPEAL NO. 6488 OF 2011 [@ SLP(C) No. 17753/2010]

ORDER

Leave granted. These cases are delinked from C.A. No. 6484/2011 (arising from SLP(C) No. 16798 of 2010).

2. The special leave petitions from which these appeals arise, were tagged with SLP(C) No. 16798/2010 on the erroneous submission that these were similar matters. But we

*find these matters are not similar to SLP(C) No. 16798/2010.
Be that as it may.*

3. *We find that the impugned order is a consent order, after considering suggestions and counter suggestions leading to a consensus.*

4. *The appellants submitted that their counsel gave consent and that they did not give consent. But that is not a ground to challenge a consent order.*

5. *Appeals are, therefore, dismissed.*

Sd./- J.

(R.V. RAVEENDRAN)

Sd./- J.

(A. K. PATNAIK)

New Delhi;

August 08, 2011."

11. As a matter of fact when the petitioner in the light of aforesaid order of Apex Court had thereafter himself filed and pressed his application before one man committee of Hon'ble Justice Uday Sinha, he cannot raise a challenge to the jurisdiction of one man committee.

12. In view of the above it has to be held that everything was open for being enquired into by Hon'ble Justice Uday Sinha, the One Man Committee, appointed by this Court and the finding recorded by him that the appointment of the petitioner was made through a backdoor by the Regional Deputy Director of Health who had no such power will have to be given due regard inasmuch as whatever was stated in the original termination order of the petitioner

passed by the Civil Surgeon on 25.7.2003 has merged with the findings recorded in the impugned order passed by one man committee of Hon'ble Mr. Justice Uday Sinha, relevant portion whereof reads as follows:-

"The petitioner was appointed by Regional Deputy Director, Health Services, Tirhut Division at Muaffarpur. On the basis of notice board advertisement, the petitioner applied for appointment and the Regional Deputy Director appointed him in his own office on the post of Clerk. After eight months the R.D.D. transferred and posted him in the office of Sub-Divisional medical office, Hajipur. The petitioner has averred that by order dated 20.1.1988 Civil Surgeon, Vaishali transferred and posted him in the office of Additional Chief Medical Officer, Vaishali by order dated 11.4.1989. In this letter it has been stated that he was being confirmed on the basis of letter no. 3494 dated 30.12.1982 issued by Joint Secretary. The letter of the Joint Secretary has not been produced before me. Be that as it may, I am accepting that that letter confirmed his service. Question however remains whether the rules of appointment contained in circular no. 16440 and 16441 of 3.12.1980 had been followed by him. It is well established that where appointment has been made throwing all rules of appointment to the wind the appointments could be illegal.

In June, 1999 Chief Secretary Bihar ordered for comprehensive enquiry into illegal appointments of class III and Class IV appointees. The petitioner was called upon to justify his appointment. After enquiry it was found that the petitioner had been appointed on the basis of his application after throwing to the wind all rules of appointment. The Civil Surgeon, therefore, by letter dated 25.7.2003 terminated his service. Since the rules of appointment had not been followed it is difficult to hold that his termination was unjustified.



The R.D.D. sought to protect his power of appointment by appointing the petitioner for his own office. The R.D.D. had power to appoint only for his own office but I find that only eight months after his appointment he transferred him to the office of Sub-Divisional Medical Officer, Hajipur. If there was vacancy in the office of R.D.D. there was no reason for transferring the petitioner in the office of Sub-Divisional Medical Officer, Hajipur and therefore, I am of the view that the order of appointment to his own office was only a camouflage by the R.D.D. to grab the power to appoint a clerk for the office of Civil Surgeon - a power which he did not possess. Since the rules of appointment had been completely ignored it is difficult to set aside the termination of the petitioner's service.

In the circumstances the petition failed and it is rejected accordingly."

13. Pausing for a minute, if the submission of Mr. Sharma is taken to logical conclusion that the reference made to Hon'ble Justice Uday Sinha in the judgment of division bench in the case of Sohan Roy Vs. State of Bihar reported in **2010(2) PLJR 397** could not have been made applicable in the case of the petitioner as no consent was given by him, the petitioner still could not have gained in any manner because when few persons who had got their cases remitted by the Apex Court while assailing the judgment of the Division Bench in the case of Sohan Roy (supra), their appointment were also held to be bad while setting aside the common judgment dated 6.10.2009 in the case of Om Prakash (supra). All these aspects have infact been gone into in a recent judgment of division bench this

Court dated 24.9.2014 in LPA No. 200 of 2010 (The State of Bihar Vs. Madhu Kumari) wherein in respect of similar illegal appointment it has been held as follows:-

"The Government of Bihar in its Administrative Reforms Department issued instructions for appointment to Class III service in the Government offices under its Circular No.16440 dated 3rd December 1980. The said Circular apply to Class III posts other than which are filled in by appointment of the candidates selected by Bihar Public Service Commission after a competitive examination and to the posts which were governed by the Government Resolution dated 28th January 1976. The said Circular sets out a detailed procedure for notifying the vacancies in Secretariat and its attached offices, District Magistrates and other Muffassil offices and for calling for applications, preparation of a common merit list and appointment from the said common merit list in order of merit. It also provides for procedure for constitution of selection committee, preparation of merit list and wait list, duration of the merit list/wait list.

A similar Circular No.16441 was issued on 3rd December 1980 for appointment to Class IV posts in the Muffassil offices of the Government.

Without entering into the details of the procedure etc. provided in the said Circulars, we may note that the said Circular had been issued to avoid discrimination in appointment to Class III and Class IV posts in the Government offices and provides for generalized procedure in consonance with Articles 14 and 16 of the Constitution.

The real controversy is whether the writ petitioners were legally and validly appointed. The repeated finding of the State Government is that many of the writ petitioners had secured employment by producing a fake or forged



appointment letter or have been inducted in Government service surreptitiously by concerned Civil Surgeon-cum- Chief Medical Officer by issuing a posting order. It is not difficult to understand a well thought design to induct the individuals in Government service without recruitment at all. Not only there was no recruitment process or that Civil Surgeon-cum-Chief Medical Officer was not authorized to make appointment, the Civil Surgeon-cum- Chief Medical Officer straight away issued a posting order in favour of the concerned writ petitioner posting him/her in Primary Health Centre in remote areas. Surely, it would be difficult, if not impossible, to detect such illegality. The Court cannot be oblivious of the fact that the writ petitioners are the beneficiaries of the illegal orders made by the Civil Surgeon-cum- Chief Medical Officers. Once it is alleged that the appointment or induction of the writ petitioners was illegal, made on the basis of forged appointment order or on the basis of illegal posting orders made by the Civil Surgeon-cum- Chief Medical Officer, the onus to prove otherwise shifts on the writ petitioners. The writ petitioners were given notice to establish the genuineness of their appointment and to show cause. None of the writ petitioners could establish the genuineness or legality of their appointment before the State Committee. Once it is found that the appointment of the writ petitioners was illegal, void-ab-initio, the challenge to the order of cancellation of appointment and discharge from service should necessarily fail. Not only the writ petitioners had failed to establish genuineness or legality of their appointment at first before the State Government and then before the State Committee, they have not produced any reliable material even before this Court on the basis of which this Court can hold otherwise. It is absolutely not the case of any of the petitioners that their appointment was made after due process of selection for public employment. In other words, the writ petitioners had not been



sponsored by the Employment Exchange Office; nor had they applied pursuant to a public notice. None of the writ petitioners was subjected to a selection process. Although some of the writ petitioners have asserted that they were qualified for appointment to the post in question, in majority of the cases even such an assertion is absent. Irrefutably none of the appointments has been made after following the procedure set out in the aforesaid circulars dated 3rd December 1980. The laudable purpose for which the said circulars were issued is defeated.

Since the report of the State Committee is questioned before us, we will examine the legality of the said report. The challenge to the said report is on the ground that although the State Government had constituted a committee of five members, ultimately the enquiry was conducted by only three of them and the report has been signed by the three members alone. The allegation is that two other officers avoided the enquiry proceeding because of the illegalities committed in the enquiry. The real issue is whether the report made by three members' Committee would be vitiated because the Committee initially comprised five members. True, it was the duty of the State Government to explain the reasons for which the two others members of the Committee did not participate in the enquiry proceeding. However, in absence of such explanation also, in our view the report of the State Committee can not be vitiated for the reason that the enquiry was conducted by three members.

At the first we will note that although the report of the State Committee is under challenge; the members of the State Committee are alleged to have committed large scale irregularities, none of the members of the State Committee has been impleaded as party respondent. In absence of the members of the State Committee, neither the allegations of



malafide or irregularities can be countenanced; nor the report can be vitiated. As recorded hereinabove, for all practical purposes it was a three member Committee and all the three members have signed the report. Merely because earlier the committee comprised of five members and the two members did not participate in the enquiry proceedings (for reasons not known), the report cannot be vitiated. Had the State Committee been a statutory committee, the said Committee could not have been constituted or have functioned except in accordance with the relevant provisions. That is not the case here. Had this Court directed to constitute a five member committee, any other committee having any different constitution may be vitiated. This Court had not issued a direction to constitute a committee comprising five members or any particular number of members. All that this Court directed was "to consider the cases of all the affected employees." The enquiry in accordance with the direction issued by this Court could have been made by an individual officer of the Government if authorized or by any committee of one or more members that the Government may constitute. The State Government, pursuant to the aforesaid direction, in its wisdom, appears to have constituted a committee of five members. Ultimately, only three members sat in the enquiry; held the enquiry and made its report. We do not see any reason why the said report cannot be believed or should be held to be illegal or invalid. It is not in dispute that the State Committee did offer opportunity of representation and hearing to the affected employees. The principles of natural justice having been complied with, this Court ought not to have any reason to disbelieve or interfere with the finding recorded by the State Committee. It is note worthy that the writ petitioners have not challenged the finding recorded by the State Committee or at least have not been able to establish that the respective finding is erroneous on the facts of the case. We have recorded the facts of one case just to

bring home the nature of illegality committed by the Civil Surgeon-cum- Chief Medical Officer. As recorded hereinabove, in repeated enquiry made by the State Government all such appointments were found to be illegal, void ab-initio. Unless there is a strong evidence of such finding being wrong, this Court in exercise of power of judicial review shall not interfere with such finding.

In the present set of writ petitions, none of the writ petitioners has dislodged the finding of illegal appointment or has established that his or her appointment was legal and valid in all respects. In our view, the learned single Judge has erred in totally discarding the report of the State Committee on the premise that only three members of the committee had conducted the enquiry and had submitted the report.

This brings us to the last question whether in view of their long service, the writ petitioners are entitled to regularization in service as observed by the Hon'ble Supreme Court in Uma Devi (3) (supra). This was the precise question which was referred to the Full Bench in the matter of Ram Sevak Yadav & Anr. (supra). The Full Bench of this Court has categorically held that the judgment in Uma Devi (supra), prohibits regularization of such appointments, the period of service being irrelevant; and that illegal appointment void ab-initio cannot be regularised under any circumstances. In view of the aforesaid decision of the Full Bench of this Court, the law laid down by the Division Bench of this Court in the matter of The State of Bihar & Ors. Vs. Binay Kumar Singh & Ors. [2011 (3) PLJR 547] is no longer a good law.

In the present case, the appointments of the writ petitioners have been repeatedly held to be non est or void ab-initio. The question of regularization of their service even by invoking paragraph 44 of the judgment in the matter of Uma Devi (3) (supra) shall not arise."



14. In view of the aforesaid authoritative pronouncement of the Division Bench in the case of Madhu Kumari (supra), nothing now remains to be answered again the case of the petitioner especially when the issue of regularization of service of the persons like the petitioner was also gone into by the Full Bench of this Court in the case of ***Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors.*** reported in ***2013(1) PLJR 964***. The Full Bench has considered the aforesaid history of the litigations and the judgments of the Hon'ble Supreme Court, more particularly the judgments in the matters of Secretary, State of Karnataka & Ors. Vs. Uma Devi (3), [(2006) 4 SCC 1]; of State of Karnataka Vs. M. L. Keshari [(2010) 9 SCC 247]; of A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam [(2012) 6 4 SCC 430]; of Sahara India Real Estate Corp. Ltd. Vs. Securities and Exchange Board of India [(2013) 1 SCC1]. Having considered the plethora of judgments on the issue, the Full Bench has answered the reference in paragraph 43 of the judgment in the following terms:-

“We therefore sum up our conclusions and answer the reference as follows:-

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.



(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any Court orders.”

15. In view of the aforesaid pronouncement of the Full Bench which also has been relied by the Division Bench in the aforesaid judgment in the case of Madhu Kumari (supra), there will be no option but to hold that no different view can be taken now by this Court in the case of the petitioner specially when he has failed to produce a chit of paper that his appointment was made pursuant to an advertisement in newspaper followed by any selection process.

16. This Court also must take note of an ancillary submission of Mr. Sharma that some persons similarly situated alike the petitioner have been retained in service on the basis of different orders passed by this Court and therefore, those orders should also be followed in the case of the petitioner.

17. In the considered opinion of this Court first of all, all these orders were passed before the judgment of the Full Bench in the



case of Ram Sevak Yadav (supra) and secondly, the case of the petitioner was examined by One Man Committee of Justice Uday Sinha and it has been found that the appointment of the petitioner was illegal on account of non-observance of the procedure laid down for appointment in the government service as prescribed in the circular dated 3.12.1980. It has also been found that the Regional Deputy Director of Education of Health Services had surreptitiously appointed the petitioner on the basis of so-called advertisement on Notice Board which as noted above has been completely deprecated by the Apex Court in the case of Mamta Mohanty (supra).

18. Added to all these, the Division Bench in a recent judgment in the case of Madhu Kumari (supra) has examined the matter threadbare and has gone to set aside the order of the Hon'ble Single Judge in the case of Om Prakash (supra) which was also passed in the case of the petitioner but could not be sustained on account of its being referred to One Man Committee. Therefore, the petitioner cannot get anything better than what has been done in the Division Bench of this Court in the case of Madhu Kumari (supra) where a large number of appeals have been allowed by setting aside the order of the Hon'ble Single Judge in the case of Om Prakash (supra).

19. The right of equality under Article 14 of Constitution of India is a positive right and cannot be enforced in a negative

manner. This Court cannot perpetuate the illegality only because it has been committed in some other cases. The Apex Court in the case of *State of Bihar Vs. Upendra Narayan Singh & Ors.* reported in 2009(5)SCC 65 has summed up this aspect beautifully wherein it has been held that even an earlier judgment of the High Court was not binding to perpetuate an illegality. The relevant portion of the aforesaid judgment reads as follows:-

"65. In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits.

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35], Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC 94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC

437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737] ."

20. As a matter of fact, from the pleadings in this writ application, it would transpire that the petitioner who is out of service since 2003 has already attained the prescribed age of superannuation in the year 2013 because he has himself sworn the affidavit in support of writ petition claiming to be of 59 years of age as on 27.09.2012. Thus, there can be now no question of either regularization of service of the petitioner in 2015 which being void ab initio had been correctly terminated by the competent authority on 25.7.2003 and had been also at least affirmed on two more occasions, firstly by the Health Department through its Committee in 2008 and finally in the impugned order passed on 04.11.2011 by One Man Committee of Hon'ble Justice Uday Sinha.

21. In that view of the matter, this writ application also must fail and is, accordingly, dismissed.

22. There would be however no order as to costs.

(Mihir Kumar Jha, J

Patna High Court
Dated the 3rd April 2015
A.F.R./Rishi/-

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