

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.700 of 2012

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1. Ratan Kumar Rao S/o Late Brij Keshri Mahto, resident of Mohalla-Bazar Samiti, Panchwati Nagar, P.S. Bahadurpur, District-Patna-16
 2. Aditya Narayan Pandey, son of Sri Bhola Nath Pandey, resident of village and P.O.-Samas, P.S. Barbigha, District-Shekhpora (Old District-Munger)

.... Petitioner/s

Versus

1. The State of Bihar
2. Amarjeet Sinha, the Principal Secretary, Health Services, Govt. of Bihar, Patna
3. Dr. Surendra Prasad, Director-in-Chief, Health Services, Govt. of Bihar, Patna
4. Dr. Suman Kumar Sinha, the Civil Surgeon-cum-Chief Medical Officer, Madhubani
5. Dr. Sanjay Kumar Sinha, the Deputy Superintendent, Sub Divisional Hospital, Jhanjharpur, Madhubani

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. ARUN KUMAR NO. 1

For the State : Mr. Upendra Pratap Sinha, A.C. to SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-10-2016

Heard Mr. Arun Kumar, learned counsel appearing on behalf of the petitioners and Mr. Upendra Pratap Sinha, Assisting Counsel to SC-4.

The grievance of the petitioners is that they are not being provided with the fruit of the judgment passed by this Court in the batch cases arising from CWJC No. 6575 of 2009 (Om Prakash vs. State), a copy of which is enclosed at Annexure-1 to the writ petition. It is submitted that the case of the petitioners is squarely covered by the judgment.

Pursuant to the order of this Court that an exhaustive



counter affidavit has been filed on behalf of the State and in which it is stated that the attempt of the petitioners to equate their case with those of the petitioners in CWJC No. 6575 of 2009 is thoroughly misconceived. As per the counter affidavit, the petitioners and a large number of persons were appointed by one Dr. A.A. Mallick, the Deputy Director, Health Services, Patna in the year 1987 which appointments were made contrary to the prescribed procedures. It is mentioned that these appointments were cancelled by a common order passed on 30.4.1993 and against which writ petitions were filed and the matter travelled up to the Supreme Court resulting in a judgment reported in **(1997) 2 SCC 1 (Ashwani Kumar & ors. vs. The State of Bihar)**. It is mentioned that the Apex Court without interfering with the termination of the services of the petitioners and illegally appointed persons, directed the State Government to advertise the posts and grant liberty to the said appointees to participate in the same. According to the State, an advertisement was issued bearing No. 1 of 1997 for appointment against Class-III and IV posts and responding to the advertisement the petitioners applied and were considered for appointment, however, they were not found fit for appointment and thus not recommended by the Bihar Public Service Commission. It is thus submitted that the case of the petitioners is governed by the judgment of the Supreme Court and the petitioners



having participated in the selection process initiated pursuant thereto and not having succeeded, they are trying to draw advantage from a judgment passed in **CWJC No. 6575 of 2009** which relates to a different set of appointees. Distinguishing the two cases it is mentioned that whereas **CWJC No. 6575 of 2009** is related to another set of illegal appointment made in Regional Office of Health Department by other officials without following the prescribed procedure, the case of the petitioners is distinct and they are illegally appointed by A.A. Mallick.

I have heard learned counsel for the parties and I have perused the records. Although Mr. Arun Kumar has tried to canvass the case of the petitioners by drawing strength from the judgment and order passed in **CWJC No. 6575 of 2009** and analogous cases placed at Annexure-1 but in my opinion the attempt is futile. The petitioners are guided by the judgment of the Supreme Court rendered in the case of **Ashwani Kumar and others (supra)** as explained in the counter affidavit as also manifest from the order present at Annexure-9 and 10 whereby similarly situated appointees including the petitioners had earlier approached this Court and the writ petition were disposed of in the light of the order passed by the Supreme Court in the case of **Ashwani Kumar and others (supra)** and in case of the failure of the State to comply with the directions issued by the Supreme Court,



liberty was granted to draw contempt against them. The present writ petition was initially filed as a contempt application but since the complaint was not against non-compliance of the judgment of the Supreme Court passed in the case of **Ashwani Kumar (supra)** rather it is non-compliance of the judgment passed in the case of **Om Prakash (supra)** in **CWJC No. 6575 of 2009** that the contempt petition was later converted into a writ petition.

Having heard learned counsel for the parties and considering the materials available on record as discussed hereinabove including the orders present at Annexure-9 and 10 and in view of the legal position flowing from the judgment of **Ashwani Kumar (supra)**, the attempt of the petitioners to draw a second round proceedings even when their termination was not interfered with by the Supreme Court, is thoroughly misconceived and the writ petition is accordingly dismissed.

(Jyoti Saran, J)

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