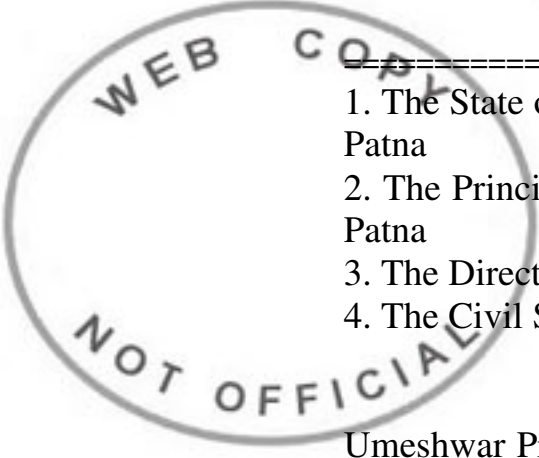


IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.552 of 2010

IN

Civil Writ Jurisdiction Case No. 7669 of 2009

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1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
 2. The Principal Secretary, Health Department, Government of Bihar, Patna
 3. The Director-in-Chief, Health Services, Government of Bihar, Patna
 4. The Civil Surgeon-cum-Chief Medical Officer, Patna.

.... Appellants

Versus

Umeshwar Prasad S/O Jai Prakash Singh R/O Village - Muradali Chak
P.S - Nagarnausa, District - Nalanda

.... Respondent

Appearance :

For the Appellant/s : Mr. Devendra Kumar Sinha, AAG-II
Mr. Sudhir Kumar, AC to AAG-II

For the Respondent : Mr. Gajanan Arun, Advocate
Mr. Gajendra kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-07-2016

The State is in this Intra-Court Appeal against the judgment and order dated 06.10.2009 passed in C.W.J.C. No. 7669 of 2009 (Umeshwar Prasad Vs. The State of Bihar and another). Let it be noted that this judgment is common to over about hundred over analogous cases. The leading case being C.W.J.C. No. 6575/2009 (Om Prakash Vs. State of Bihar and others).

2. All these writ petitions related to appointment to various non-gazetted posts in Health Department at district



level. The learned Single Judge without examining individual facts of the cases which related to dismissal from service passed a common order holding that the enquiry committee report which affirms their dismissal on the ground of their appointment being illegal was not duly constituted and the petitioners were not heard by the enquiry committee and as such their dismissal could not be upheld.

3. We have heard the learned counsel for the State and learned counsel for the writ petitioner who is the respondent herein at length and with their consent we are disposing of this appeal at the stage itself.

4. At the cost of repetition, we may point out that learned Single Judge did not examine individual facts of the individual cases and passed a general order covering all the cases. Let it also be noted that several Letters Patent Appeals were filed by the State and some of them were allowed and some of them were dismissed. We would not be persuaded to consider various propositions of law without first examining the facts of the case. This is so because in several Intra-Court Appeals that we heard, when we examined the facts, we found that the order of the learned Single Judge could not be sustained inasmuch as even the writ petitioners who are respondents in those appeals, when they were asked to



produce documents to support their selection/recruitment process, all they could produce was an appointment letter which itself was disputed by the State saying that there is no such record of issuance of such appointment letters. It is this that persuades us to examine the facts of the case and the facts we are dealing.

5. In the writ petition, petitioner has pleaded that he was engaged by the Civil Surgeon, Madhubani, and without show cause, he was dismissed. He was then reinstated. His appointment was challenged by one Ram Lakhan Thakur in writ petition being C.W.J.C. No. 8670/1995. He was then dismissed by Civil Surgeon, against which he again filed a writ petition along with several other writ petitions. The matter was referred to a Five Men Committee by this Court. The Five Men Committee had given an adverse finding without hearing him and as such he filed the present writ petition being C.W.J.C. No. 7669/2009, which was allowed with the orders of reinstatement.

6. Sri Devendra Kumar Sinha, learned Additional Advocate General – II, in support of the Intra Court Appeal by the State submits that the facts as stated by the writ petitioner/respondent herein are not the full truth. They are only half truth deliberately shown to mislead the Court. He

points out that the writ petitioner/respondent nowhere states in the writ proceedings that one Ram Lakhan Thakur, in C.W.J.C. No. 8670/1995, had challenged writ petitioner's appointment. The facts are a bit different. We would thus examine those facts from the records available.

7. It appears that when the appointment of Ram Lakhan Thakur and several others were cancelled by the Civil Surgeon, Madhubani, they moved this Court in C.W.J.C. No. 8670/1995. During the pendency of the writ petition, one of the issues raised by the writ petitioner therein, Ram Lakhan Thakur, was that there were similarly selected and appointed persons like this petitioner namely Umeshwar Prasad who were continuing in service. By orders of this Court, Umeshwar Prasad and two others as added respondent nos. 7, 8 and 9 to those writ proceedings. Notices were issued to them. They were duly served and they appeared. They filed counter affidavit. This Court directed them to file supplementary counter affidavit giving details of the selection process. They did not file any such affidavit. In the meantime, State filed affidavit stating that Umeshwar Prasad and other two, their appointments having been found illegal by Civil Surgeon, Madhubani, they were cancelled by Office Order No. 289 dated 9th February, 1998. The order was brought on record.





Umeshwar Prasad and others who were respondent nos. 7 to 9 could not challenge the validity of the order and could not defend their appointment. The Court gave a specific finding that the selection and appointment of respondent nos. 7 to 9 including Umeshwar Prasad was void and illegal and specifically upheld the order of termination aforesaid. These facts were not disclosed by the writ petitioner/respondent in the present proceedings. Further, from this judgment, these respondent nos. 7 to 9 including Umeshwar Prasad, they, including Umeshwar Prasad preferred an Intra-Court Appeal being Letters Patent Appeal No. 296/1998 which was dismissed by order dated 22.07.1998, affirming the order of the learned Single Judge which in turn had affirmed the order of dismissal. Notwithstanding the aforesaid, the petitioner independently then challenged the dismissal order concealing all these facts and got an order along with several other cases referring his termination to a Committee and then the Committee having also found that the appointment was illegal. The order of the Committee was then challenged in another writ petition from which this appeal arises.

8. Having considered the matter, in our view, the facts are eloquent enough to allow this appeal by the State. The termination order of the writ petitioner-respondent in

1998 had been affirmed by learned Single Judge and Division Bench of this Court. It could not have been made subject matter of further challenge. The order having been affirmed, the petitioners could not have been reinstated, even if reinstated and dismissed again without getting over the dismissal order of 1998 and without stating these facts before the Court. He could not have proceeded to this Court.

9. Thus, on the principles of *suppressio veri; suggestio falsi*, the writ petition ought to have been dismissed. We do accordingly and allow the appeal of the State.

10. The order of learned Single Judge giving reinstatement to the writ petitioner/respondent stands vacated. The writ petitioner/respondent could not be given any benefit from any order of this Court.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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