

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1609 of 2012

IN

Civil Writ Jurisdiction Case No. 17198 of 2008

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Satyendra Kumar, Son of Shri Lal Krishna Prasad, Resident of Village- Nawadah,
P.O.- Tilakai, P.S.- Makhdumpur, District- Jehanabad

.... Appellant

Versus

1. The State of Bihar, through the Secretary cum Commissioner, Health Department, Govt. of Bihar
2. The Director of Chief, Health Department, Govt. of Bihar, Patna
3. The Civil Surgeon cum Chief Medical Officer, Jehanabad
4. The Collector, Jehanabad
5. The Deputy Development Commissioner, Jehanabad
6. The Deputy Collector (Establishment), Jehanabad

.... Respondents

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Appearance :

For the Appellant : Mr. Rajendra Narain, Sr. Advocate
Mr. Arvind Prasad Singh, Advocate

For the Respondents : Mr. Anil Kumar Sinha, GA-9
Mr. Pawan Kumar, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-02-2016

We have heard learned counsel for the appellant
and learned counsel for the State at length and with their consent are
disposing of the appeal at this stage itself.

2. We have heard Sri Rajendra Narain, learned
Senior Counsel in support of the intra-court appeal against the
judgment and order dated 02.04.2012, passed by learned Single Judge
of this Court in C.W.J.C. No. 17198 of 2008.



3. The writ petitioner-appellant was appointed on daily-wager on 23.09.1991 on the post of Steno-Typist by the then Civil Surgeon-cum-Chief Medical Officer, Jehanabad. On 29.09.1992 he was regularized on the said post. Subsequently, finding the appointment to be per se illegal on 31.12.1999 petitioner's appointment was cancelled. Petitioner then filed C.W.J.C. No. 3252 of 2001 which was heard along with L.P.A. No. 946 of 2003 and analogous cases. There were large number of similar cases and they were all taken up by a Division Bench of this Court and ultimately they were heard along with L.P.A. No. 946 of 2003 and were disposed of by a common order dated 26.06.2006 directing the Government to constitute a Committee and take decision in accordance with the judgment of the Apex Court in the case of *State of Karnataka Vs. Uma Devi since reported in (2006) 4 SCC 1*. State Government constituted a Five Men Committee and it appears the recommendation of the Committee in relation to the writ petitioner was that his appointment was illegal. While this matter had been so decided, it appears that there were some other matters also pending in the High Court. In one of them certain directions for reinstatement were issued. It is not disputed that those matters did not relate to the writ petitioner. The Civil Surgeon-cum-Chief Medical Officer, Jehanabad then issued an order on 29.02.2008 clearly stating that in view of the order of the



High Court in C.W.J.C. No. 9759 of 1999 dated 01.08.2005 and M.J.C. No. 2251 of 2006 being order dated 07.12.2007 the writ petitioner was being reinstated with effect from the date of his dismissal as Steno-Typist. It may be noted here that the learned Senior Counsel fairly conceded that none of these orders, as referred to above, were in relation to the writ petitioner. Immediately thereafter was the impugned order (Annexure-18 to the writ petition) issued on 01.03.2008 wherein it was stated by the Civil Surgeon-cum-Chief Medical Officer, Jehanabad that in view of decision of the Committee constituted pursuant to the decision of the High Court in L.P.A. No. 946 of 2003 the writ petitioner's appointment having been found to be illegal he is once again dismissed with effect from his original dismissal. It is this order that was challenged before the Writ Court in the present proceedings.

State took stand that the Committee that was constituted pursuant to the orders passed by this Court in the batch of cases to which writ petitioner was a party had clearly opined that the appointment of the writ petitioner was illegal. That finding of the Committee was never challenged and as such the order of the Civil Surgeon passed consequent upon the said Committee's report ought not to be interfered with. As before the learned Single Judge so before us, it was argued by the appellant- writ petitioner that in view of the



decision of this Court in different sets of writ petitions where reinstatement orders were passed, the Civil Surgeon had correctly passed the order of reinstatement on 29.02.2008 and having passed the order of reinstatement and writ petitioner having joined pursuant thereto, no order in terms of order as contained in Annexure-18 to the writ petition could be passed.

The learned Single Judge, in our view, rightly held that firstly the orders were passed in cases in which petitioner was not a party and those orders were passed prior to the order passed in Letters Patent Appeal No. 946 of 2003 and analogous cases in which petitioner was a party. The order passed in Letters Patent Appeal having attained finality and the report of the Committee pursuant thereto having not been challenged, the order of the Civil Surgeon dated 01.03.2008, terminating the service of the writ petitioner, could not be interfered with. We are of the considered opinion that the learned Single Judge rightly dealt with the matter. The writ petitioner-appellant had suffered a consent order in L.P.A. No. 946 of 2003, pursuant thereto, a Five Men Committee examined the matter and held that writ petitioner's appointment was illegal. The finding of the Five Men Committee has never been challenged by the writ petitioner even though it was made an issue in the writ proceedings by way of counter affidavit.

Sri Rajendra Narain sought to persuade us that in several cases in which petitioner was not a party this Court had set aside the report of the Five Men Committee. All we can say is that those are judgment in personem and not judgment in rem. Benefit would only accrue to the petitioners of those cases. The writ petitioner-appellant even though was aware, did not challenge the report insofar as it concerns him. Thus, the report attained finality. That being the position reliance on any earlier decision of cases in which the writ petitioner-appellant was not a party cannot be of any avail. We, thus find no merit in this appeal. It is consequently dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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