

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16091 of 2011

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Prem Chandra Prem, Son of Late Raghunandan Yadav, resident of village-Sunder, Police Station- Madhapur, District- Madhubani

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The Director-in-Chief, Health Services, Government of Bihar, Patna
3. The Civil Surgeon-Cum-Chief Medical Officer, Madhepura, District-Madhepura
4. The Civil Surgeon-Cum-Chief Medical Officer, Madhubani
5. The Dy. Superintendent, Sub-Divisional Hospital Jhanjharpur, District-Madhubani

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajoy Kumar Chakraborty

For the Respondent/s : Mr. AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 26-10-2016 Heard Sri Ajay Kumar Chakraborty, learned
counsel for the petitioner and learned AC to GP-3.

The sole petitioner has approached this Court, invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order dated 25.01.2011 passed by one man committee, headed by Hon'ble Mr. Justice Uday Sinha. The one man committee after giving full opportunity to the petitioner and hearing has recorded a finding that appointment of the petitioner was forged. The petitioner had claimed that he was appointed in the year 1988 as Male Family Welfare Worker. As per claim, he was appointed by the Civil Surgeon and posted in

Primary Health Centre, Alam Nagar, Madhepura. Subsequently, after noticing the appointment of the petitioner as illegal, the service of the petitioner was terminated in the year 2003.

It was submitted by learned counsel for the petitioner that the petitioner had earlier assailed the order of his termination. In the meanwhile, number of identical writ petitions were heard together by a Division Bench with L.P.A. Thereafter, the Division Bench directed for constituting five-man committee to examine the cases. This was the first stage of litigation. Thereafter, five-man committee examined the cases and more than 100 of such cases were decided. It was not end of the matter. Thereafter, five-man committee report was also assailed and a Single Bench of this Court allowed more than 300 writ petitions by one order. The said order was assailed by the State Government by filing an appeal vide L.P.A. No. 1623 of 2009. The Division Bench vide its order dated 11.02.2010 with consent of the parties disposed of the appeal and constituted a single man committee headed by Hon'ble Mr. Justice Uday Sinha with certain guidelines. It would be necessary to incorporate the order as under:

“Having heard learned counsel for the parties as also after taking into consideration the facts and circumstances in the aforesaid application seeking condonation of delay in filing of the appeals we are inclined to allow such prayer specially when learned counsel

for writ petitioner-Respondents have also raised no objection in such condonation of delay.

Accordingly the delay in filing of the connected appeals is hereby condoned and the aforesaid interlocutory applications are allowed.

As we have condoned the delay, we with the consent of the parties are also inclined to take up these appeals for final disposal at motion stage.

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Heard Mr. P.K. Shahi, learned Advocate General, Mr. A.K. Singh, learned Additional Advocate General, Mr. Arup Kumar Chongdar, Assistant State Counsel to A.A.G.2 for the appellants and Mr. S. B.K. Mangalam, Mr. Shayama Prasad Mukherjee, learned Senior counsel, Mr. Y.V. Giri, learned Senior counsel, Mr. Ashok Kumar Singh, Mr. Banbari Sharma, Mr. Prafulla Chandra Jha, Mr. Ajoy Kumar Chakarverty, Mr. Panditji Pandey, Mr. Sunil Kumar, Mr. Vijoy Kumar Singh, Mr. Shambhu Sharan Singh, Mr. Ranjan Kumar Dubey, Mr. Lalan Singh, Mr. Gyanprakash, Mr. Diwakar Pd. Singh, Mr. Ranjit kumar Singh, Mr. Sheel Bhadra Jha, Mr. Praveen Kumar Verma, Mr. Abhinash Kumar Singh, Mr. Shakti Singh, Mr. Santosh Kumar Verma, Mr. Srikant Pandey, Mr. Vivek Pd, Mr. Satish Chandra Mishra, Mr. Baban Rai, Mr. Jitendra Pd. Singh, Mr. Umesh Kumar, Mr. Gazanan Arun, Mr. Shakti Sharan Kumar, Mr. Rajnandan pd. Singh, Mr. Sidharth Harsh,

Mr. Shibbalak Singh, Mr. Surjnarin Singh, Mr. Radha Mohan Singh, Mr. Shashibhushan Singh, Mrs. Manisha Singh, Mr. R.K. Shukla, Mr. Baijnath Thakur, Mr. Vindyachal Singh, Mr. Ajoy kumar Chakarverty, Mr. Roshan Kumar Mishra and Mr. Shiv Kumar for the respondents.

In these batch of appeals the assail is to the order passed by the learned Single Judge in case of C.W.J.C. No.6575 of 2009 (Omprakash Vs. State of Bihar and other connected writ petitions) wherein the learned Single Judge had passed the following order:-

“The judgment under appeal also appears to be on the premise as if the case is for considering regularization. The reference to Uma Devi’s case (Secretary, State of Karnataka Vs. Uma Devi (3) and others: (2006(2) PLJR (SC) 363): and Verma’s case State of M.P. and others Vs. Lalit Kumar Verma: (2007) I SCC 575) are pointer to that. The present case being not a case of claim of regularization but the termination of a permanent employee, in our opinion, both the decisions are not applicable to the present case.

On consideration of submission of the parties and taking into consideration the facts of the case, I find the impugned enquiry report has been prepared completely in violation of rule of natural justice. The authorities failed to consider that they are conducting enquiry in relation to permanent employees’ appointment. For that proper course was to initiate a departmental proceeding and not to decide the nature of their appointment in absence of the employees. The authorities also ignored the relevant government circulars which were in vogue at the time of petitioners respective appointment. While putting the petitioners in the category of forged appointee, the

members of the enquiry committee have simply considered the dispatch register and not the signatures under which relevant appointment letters were issued. Signatures of the appointing authorities were not verified.

All these are the reasons for which the impugned enquiry report dated 31.12.2008 is quashed. The writ applications in which termination orders have been issued by the Civil Surgeon or any other authorities those letters are also quashed. The respondents are directed to reinstate the petitioners on the post, they were working. Their reinstatement will be with effect from the date of their termination with all consequential benefits.”

At the very outset it would be apposite to state the learned Single Judge has disposed of 319 writ petitions by a singular order. The state has not preferred appeals against some orders passed in the writ petitions. Ordinarily, we would have dwelt upon the matter in a different manner, but what has transpired in course of hearing when the appeals were argued, we think it appropriate to dispose of the appeals and not to wait for the others appeal to be filed and listed.

When the appeals were taken up, after some debate it emanates that pivotal grievance of the State-appellants is that it was incumbent on the learned Single Judge to address the lis involved in each cases or at least similar batch of cases instead of disposing of the entire bunch of 319 writ applications in a singular order. Learned counsel appearing for the respondent-writ petitioners in one voice have submitted that before adverse order of termination of service of the writ petitioners came to be passed they were not afforded an opportunity of hearing by the competent authority as a consequence of which they have suffered immense

jeopardy. When debate was on, certain suggestions and counter suggestions cropped up and eventually a consensus was arrived at, which we also find it to be appropriate, apposite and apt in existing factual matrix.

Regard being had to the concession given by Mr. P.K. Shahi, learned Advocate General after obtaining instructions from the competent authorities of the State and the concession given by the learned counsel for the respondents-writ petitioners, we proceed to record the terms and conditions which would form spine of the present order. The terms and conditions in seriatim are as follows:-

(a) The directions contained in the order passed by the learned Single Judge against which the present appeals are preferred would stand nullified.

(b) A one man committee of Hon'ble Mr. Justice Uday Sinha, a retired Judge of this Court shall look into the various facets of nature of appointments that were given to the writ petitioners with a view to adjudicate the legality of their appointments and continuance in service.

(c) The committee shall hold its sittings in the building situate in House No.42, Harding Road, Patna.

(d) The State Government shall provide the committee with a secretariat consisting of a Secretary (not below the rank of Joint Secretary of the State cadre) and also sufficient number of stenographers (not less than five) as also three orderly peons who may be engaged on contract basis.

(e) One man committee shall be provided with all the facilities in terms of salary and perks that are made available to the

sitting Judge of a High Court minus the amount of monthly pension.

(f) One man committee shall make its all endeavours to decide the matter within a period of three months from the date of commencement of its first sitting. The committee shall fix its first of hearing in the 3rd week of March, 2010.

(g) The employee-writ petitioners shall file their individual written brief synopsis of their cases along with the connected documents in three copies before the committee on the first date or any adjourned date as determined by the committee. The State Government shall also file three copies of written individual rejoinder along with the documents sought to be relied within 15 days of receipt of a copy of the aforesaid written brief synopsis or within such extended period as directed by the one man Committee.

(h) Additionally the State Government shall also furnish any other document/information as directed by one man committee so that the whole issue of legality of the appointment of the employee writ petitioner is assessed and decided by it in an objective manner for once and all.

(i) The one man committee shall also afford an opportunity of hearing to both the parties and in course of such hearing it would be open to the affected employee writ petitioners to satisfy the said committee that his/her appointment was tenable in law and there was/is no reason to unsettle his/her appointment.

(j) It would also be open to the employee-writ petitioners to demonstrate and establish before the said one man committee that his/her case is similar to those of the

persons who have been retained and/or reinstated in service in the wake of the report of the screening committee headed by the Director-in-Chief of Health Department constituted in terms of the earlier directions of this court in the order dated 26.6.2006 in L.P.A. no. 946 of 2003 (State of Bihar Vs. Purendra Sulan Kit) and its analogous cases, reported in 2006(3) PLJR 386.

(k) Neither the State Government nor the employee writ petitioners however shall be permitted to refer to and/or rely on any of the findings recorded by any of the Enquiry Committee earlier before the one man committee.

(l) The other modalities of scrutiny of individual appointment of the employee-writ petitioners on the basis of documentary evidence to be led by both the parties would be decided by the one man committee.

(m) The employees who have been working and getting the benefit of pay till the date of filing writ petition shall not be dislodged from the service pending enquiry and passing of the final order by the committee.

(n) The employees whose joining has been accepted by the competent authority pursuant to the order passed by the learned Single Judge may attend the office and do their duties but shall not draw the pay and their pay shall be given only after the matter is finalized by one man committee.

(o) All other employees writ petitioners terminated from service would be reinstated only in case the committee records finding in their favour holding their appointment and continuation in service to be legal.

(p) Such of the employees writ petitioners who would continue in service during the pendency of the enquiry proceedings before the one man committee would be entitled for payment of salary from the date of this order and till passing of the final order by the one man committee even if the committee would not approve their initial appointment and continuation in service.

(q) If either of the parties is adversely affected by the decision of the committee in any manner, it would be open for them to assail the same before the appropriate legal forum.

The appeals are accordingly disposed of on the aforesaid agreed terms.

There shall be however no order as to costs.

Be it noted the present order is restricted to the appeals which are disposed of by the present order only. Needless to say the orders which have been passed in other writ petitions are not affected and that is why we have said in the beginning that the directions given by the learned Single Judge pursuant to the writ petitions order of which under challenge in appeals are confined to the parties of these appeals only.

A free copy of the order be handed over to Mr. A.K. Chongbar, learned counsel for the State to do the needful in future.”

In the meanwhile, the writ petition filed by the petitioner was also heard along with number of other writ petitions, which was disposed of on 06.10.2009. The petitioner's writ petition was numbered as C.W.J.C.No.7492 of 2009, which



was heard and disposed of with C.W.J.C.No.6575 of 2009 and other connected writ petitions. In respect of petitioner's case, the State preferred an appeal vide L.P.A. No.483 of 2010. The said appeal was disposed of on 15.03.2010 vide Annexure-10 to the writ petition in the same terms i.e. in terms of order dated 11.02.2010 passed in L.P.A. No.1623 of 2009. After the order of L.P.A. Court, it was submitted by learned counsel for the petitioner that the petitioner participated in the proceeding before the one man committee. However, one man committee ignoring several facts and even after noticing that there was no definite fact to suggest as to who had committed forgery, whether the then Civil Surgeon or the petitioner, the single man committee has held the appointment of the petitioner as illegal, which, according to petitioner, is not sustainable in the eye of law. According to learned counsel for the petitioner, the order contained in Annexure-1 is liable to be set aside in absence of any specific finding, whereas learned AC to GP-3 by way of referring to Annexure-11 i.e. order dated 25.01.2011 passed in Case No.148/2010 (Arising out of L.P.A. No.483 of 2010) submits that the order categorically indicates that the appointment of the petitioner was illegal. He further submits that since the one man committee after granting full opportunity to the petitioner had

recorded a finding, such finding may not be interfered with unless there is allegation that there was procedural mistake. Finding of facts recorded by one man committee may not be looked by this Court.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly Annexure-11 i.e. impugned order. After going through the impugned order, it is evident that the one man committee has categorically held that the appointment of the petitioner was forged, as neither there was any advertisement nor any recommendation of the Selection Committee. There is no any sufficient material on record to show that the appointment letter was issued in accordance with law. The onus was on the petitioner to satisfy the one man committee that there was no illegality in the order and the appointment of the petitioner is legal and not forged one.

Accordingly, there is no reason to interfere with the impugned order. The writ petition stands dismissed.

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(Rakesh Kumar, J)