

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7976 of 2015

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Satya Narayan Mandal, Son of Late Siya Mandal, Village-Sisai, P.O.-Rajar
Rambhadrapur, P.S.- Samastipur, District- Samastipur

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Bihar, Patna.
2. Director-in-Chief, Directorate Health Services, Bihar, Patna.
3. Superintendent T.B. Hospital, Koilwar, Bhojpur.
4. Deputy Director, Health Services (Primary) Govt. of Bihar, Patna.
5. Civil Surgeon-cum-Chief Medical Officer, Katihar
6. In-charge Medical Officer, Manihari.

.... Respondents

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Appearance :

For the Petitioner/s : Ms Renu Jha, Adv.

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

Mr. Intekhab Hasan, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-02-2017

Heard Ms. Renu Jha, learned counsel appearing for the
petitioner and Mr. Intekhab Hasan, AC to AAG-13, for the State.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner has prayed for quashing of the order bearing
Memo No. 2502 dated 12.12.2014 issued under the signature of the
Civil Surgeon cum Chief Medical Officer, Katihar, impugned at
Annexure 12, in so far as it relates to the petitioner, whose name
appears at serial no.3 of Kandika-3, whereby the petitioner's
appointment has been terminated, inter alia, on grounds that it was
illegal/ forged.



This case has its own peculiarities. It is not in dispute that the petitioner was working as a casual wage employee in the T.B.Hospital at Bhojpur against the post of Driver. It is in the light of the circular issued in the Directorate of Health Services, Bihar, Patna dated 30.4.1986, which, inter alia, provides for regularization of services of casual wage employees, that the case of the petitioner was also considered and the petitioner vide Memo No. 668 dated 18.8.1989 was brought into regular establishment on a temporary basis by way of appointment. The order of the Superintendent, T.B.Hospital makes it very clear that the appointment was temporary and would be terminated without prior notice. A copy of the circular which is the foundation for the order dated 30.4.1986 of the Director of Health Services and the appointment order, is at Annexures 1 and 2 respectively to the writ petition. The Director of Health Services in consideration of the circumstances where the petitioner was working to the satisfaction, issued an order dated 15.2.1992 transferring the petitioner under the Civil Surgeon, Purnea with a clear stipulation that if there would be any vacancy against the post of a Driver, the Civil Surgeon would take appropriate steps for absorption of the petitioner against such post and inform accordingly. This order is present at Annexure 3. In view of the order of the Director-in-Chief of the Health Services dated 15.2.1992 that the petitioner was relieved by



the Superintendent, T.B.Hospital, Bhojpur vide order dated 22.2.1992 present at Annexure 4 and a formal order confirming transfer was issued under the signature of the Deputy Director, Health Services, addressed to the Civil Surgeon cum Chief Medical Officer, Purnea on 13.3.1992, present at Annexure 5. The petitioner was subsequently transferred to Primary Health Centre, Manihari in the district of Katihar and it is here that an issue of his appointment cropped up when he was served with a show cause by the Civil Surgeon cum Chief Medical Officer bearing Memo No. 1046 dated 24.4.2000 which was duly replied by the petitioner. The allegation against the petitioner was whether there was any advertisement issued for his appointment and whether roster clearance has been obtained. This fact is manifest from the second show cause notice issued by Civil Surgeon cum Chief Medical Officer dated 24.8.2002 bearing Memo No. 1790, present at Annexure 6. The petitioner responded to the show cause notice through his reply dated 14.12.2002, present at Annexure 7, explaining his absorption in regular establishment. The reply did not satisfy the Civil Surgeon cum Chief Medical Officer who vide order bearing No. 1014 dated 30.4.2003 terminated the petitioner from the post of Driver holding his appointment illegal. The petitioner approached this Court in C.W.J.C.No. 7797/2003 and a Bench of this Court by the order passed on 1.9.2003 while granting



time to the respondents to file counter affidavit, stayed the operation of termination order. It is while this matter was pending consideration before this Court that an issue as regarding irregularities in Class III and IV appointment fell for consideration before this Court in a Letters Patent Appeal preferred by the State questioning one such order of the Bench, whereby termination order had been set aside giving rise to L.P.A.No. 946/2005 and analogous cases. The Letters Patent Appeal was heard alongwith a batch of appeals and writ petitions pending consideration before this Court on similar issue including the writ petition filed by this petitioner arising from C.W.J.C.No. 7797/2003. The Division Bench in consideration of the matter in contest disposed of the batch of cases in the following terms:

"10. All the Letters Patent Appeals whether preferred by the State or by affected employees and all the Writ Petitions preferred by the affected employees are hereby disposed of by this common judgment and order with a direction to the authorities of the Health Department, Government of Bihar to consider the cases of all the affected employees with a view to find out on the basis of relevant facts and law as settled by the Constitution Bench in the case of **Secretary, State of Karnataka vs. Uma Devi** (supra) as to which of such affected employees are fit for regularization in terms of that judgment, particularly in terms of paragraph 44 of the judgment. Such exercise should be completed within a period of six months from today. If for any



good reason, the time period is required to be extended then the respondent State must file an application for that purpose and seek extension from this Court. Till the process is completed, the State of Bihar and its authorities shall maintain status quo in respect of services of the affected employees as existing on date. The status quo shall get revised by the orders that may be passed by the authorities in respect of affected employees as a result of the exercise to be undertaken by them and their final decision in the light of this judgment and order.

11. Before parting with this judgment and order, it is considered relevant to observe that recently a writ petition bearing CWJC No. 3349 of 2000 (**Yogendra Singh & ors. vs. the State of Bihar & ors.**) was disposed of by judgment dated 9.5.2006 rendered by one of us, Shiva Kirti Singh, J. in which reliance was placed upon the aforesaid Constitution Bench judgment of the Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi** for directing the State Government to consider the cases of petitioners of that case for regularization as a one time measure, if their cases meet the requirements laid down in the aforesaid judgment. As observed in that judgment, here also it is clarified that the authorities of Health Department, Government of Bihar, while considering the cases of affected employees in these cases, may consider and take decision as per law in respect of similarly situated other employees of the Department if any, and for that category of similar situated employees, the Department



may issue public notice etc. if it is so advised. But they must be conscious of the judgment of the Apex Court, as noticed above, that the exercise of regularization is only a one time measure for the whole Department and no such further exercise will be permissible after the one time measure is resorted to and completed within a reasonable period. Thereafter, the vacancies must be filled up as per requirement of the Department in regular manner as per direction of the Apex Court."

The judgment of the Division Bench is reported in 2006(3) PLJR 386 (**State of Bihar v. Purendra Sulan Kit**). Even when the matter on re-examination of the appointment in the Health Department was pending consideration that the petitioner was granted ACP together with consequential benefits, which is evident from an order bearing Memo No. 697 dated 13.3.2010 of the Civil Surgeon cum Chief Medical Officer, Katihar, present at Annexure 11. Following the order of the Division Bench that a second set of termination order was passed which again was put to question before this Court and while the learned Single Judge of this Court allowed the writ petition the matter again reached to the Division Bench in L.P.A.No. 200/2010 and analogous cases. The Division Bench vide judgment and order passed on 24.9.2014 upheld the termination put to challenge in the said set of cases. In the opinion of the Division Bench, none of the petitioners were able to dislodge the finding of



illegal appointment. In such view of the matter, the Division Bench was not persuaded to grant indulgence to the case of those petitioners for regularization in terms of paragraph 44 of the judgment of the Supreme Court rendered in the case of **Secretary, State of Karnataka vs. Uma Devi**, since reported in (2006)4 SCC 1.

In so far as the present petitioner is concerned, the matter had remained pending and it is in the light of the judgment passed by this Court in the case of **Purendra Sulan Kit** (supra) arising from L.P.A.No. 946/2003 and analogous cases and the judgment in the case of **Madhu Kumari** (supra) arising from L.P.A.No. 200/2010 that the exercise was undertaken to hold the appointment of the petitioner, illegal/ forged.

The short argument advanced by Ms. Renu Jha, learned counsel for the petitioner, to question the impugned order is that the case of the petitioner is not a case of fresh appointment, rather it is a case of regularization in the light of the departmental circular dated 30.4.1986 and which has the approval of even the Directorate as manifest from Annexures 1 to 5 of the writ petition. She submits that where the foundation for the right claimed by the petitioner lay on the circular of the State Government itself dated 30.4.1986 providing for regularization of daily wage employees and since there is no dispute that the petitioner was working as a driver albeit as a daily wage



employee and which was the foundation for his regularization, the case of the petitioner can not be termed either illegal or resting on forged document. It is submitted that the order is also not sustainable because neither the copy of the enquiry report was supplied to the petitioner nor he was given opportunity to contest the same.

The order is being defended by the learned State Counsel relying upon the directions issued by the Division Bench to submit that since the appointment of the petitioner was without following due process which was within confines of an illegal appointment and thus not sustainable.

I have heard the learned counsel for the parties and have perused the records.

While the respondents have taken note of the stand of the petitioner claiming regularization in the light of the Directorate circular dated 30.4.1986 and even though the counter affidavit finds the absorption irregular but the reasons are lacking. Whether or not any procedure is to be followed for regularization of the service of the daily wage employees in terms of the circular dated 30.4.1986 present at Annexure 1, the circular is silent and even the counter affidavit is silent. The case of the petitioner prima facie does not reflect a case of backdoor appointment, rather the issue is whether or not his regularization on the post, by virtue of his continuation as a daily



wage employee in terms of the own circular of the Health Department dated 30.4.1986 satisfied the procedure. The order of termination does not discuss any foundations nor gives reasons. Even when the High Court granted liberty to the respondents to examine the case of the employees, each case had to be considered on its own merits. Manifestly the case of the petitioner is not a case of fresh appointment rather is a case of regularization on the post. Thus, it had to be considered whether or not his regularization was in tune with the circular dated 30.4.1986 and in the backdrop of the decisions and correspondences present at Annexures 1 to 5. It has not been done so. On the other hand, neither the copy of the enquiry report has been provided to the petitioner as contended by the petitioner nor has the petitioner been afforded an opportunity to defend his regularization by the Civil Surgeon cum Chief Medical Officer, Katihar. The counter affidavit also does not answer these issues. The order thus suffers violation of the principles of natural justice. A case of denial of reasonable opportunity.

In the uncontested position discussed, the termination order bearing Memo No. 2502 dated 12.12.2014 passed by the Civil Surgeon cum Chief Medical Officer, Katihar in so far as it relates to the petitioner, Satya Narayan Mandal, whose name appears at serial no.3 of the list of employees under Kandika-3 cannot be upheld and is



accordingly quashed and set aside. The petitioner stands reinstated.

The consequences shall follow.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2017
Transmission Date	NA

