

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.198 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4661 of 2012**

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Dewashish Ghosh, Son of Late Anil Chandra Ghosh, Resident of village -Rasiyari,
Police station- Ghanshyampur, District-Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Bihar, Patna.
3. The Director in Chief, Health Services, Bihar, Patna.
4. The Civil Surgeon-cum-Chief Medical Officer, Madhubani.
5. The In-charge Medical Officer, Primary Health Centre, Madhepur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prafull Chandra Jha, Advocate
For the Respondent/s : Mr. Kaushal Kumar Jha, AAG-14
Mr. Amish Kumar, AC to AAG-14

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Appearance :

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

C.A.V. JUDGMENT

(Per: HONOURABLE Mr. JUSTICE AHSANUDDIN AMANULLAH)

Date: 17.05.2016

Heard learned counsel for the parties.

In the present appeal under Clause-X of the Letters Patent of Patna High Court, the appellant has assailed the order dated 14.03.2012 passed by the learned Single Bench by which C.W.J.C. No. 4661 of 2012 filed by him has been dismissed.

Before the learned Single Bench, the appellant had assailed the order of the One Man Enquiry Committee dated

06.05.2011 constituted pursuant to the order of a Division Bench of this Court in the case of **State of Bihar vs. Sohan Roy** and analogous cases dated 11.02.2010 as reported in **2010(2) PLJR 397**, by which the appointment of the appellant was held to be illegal and termination justified.

Learned counsel for the appellant submitted that the learned Single Bench order is based on wrong consideration of facts and law. It was submitted that the appellant was appointed in the year 1987 on the post of Basic Health Worker by the Civil Surgeon, Madhubani and worked on a Class-III post for more than 15 years without any break. He submitted that the termination order dated 28.02.2003 does not speak about any technical qualification and has been passed only on the ground that the procedure for such appointment has not been followed and this fact has not been considered by the One Man Committee or the learned Single Bench. It was further submitted that even the One Man Committee allowed cases of other similarly situated persons and the case of the petitioner was arbitrarily not considered. Learned counsel submitted that though L.P.A. No. 479 of 2010, in the case of the appellant, was disposed off on 15.03.2010, in the same terms as of **State of Bihar vs. Sohan Roy** (supra), the One Man Committee has gone beyond the mandate given to it and in fact services of three other similarly situated persons, who were terminated under the same Memo as that of the appellant, have been regularized. He



submitted that in the case of Mahesh Kumar Mukhiya, a Single Bench of this Court had quashed his termination order and the same was confirmed by the Division Bench and after reinstatement, he is continuing in service. Learned counsel relied on the decision of a Bench of this Court in the case of ***State of Bihar vs. Binay Kumar Singh*** reported as **2011(3) PLJR 547**, to contend that the Court had upheld the quashing of the termination order in a case where though a Five Men Committee was constituted pursuant to the Court's direction, only three had signed the report declaring the service of the petitioner illegal.

Learned counsel for the State submitted that the appellant has absolutely no case for his reinstatement/regularization. It is submitted that the initial engagement of the appellant clearly being without following the prescribed procedure and in violation of the mandate of Article 14, without open competitive selection, cannot be regularized under any circumstances. For such proposition, he placed reliance on a Full Bench decision of this Court in the case of ***Ram Sevak Yadav vs. State of Bihar*** reported as **2013(1) PLJR 964**. It was further submitted that the appellant also did not possess the requisite qualification which was the pre-requisite for being appointed on the post of Basic Health Worker at the relevant time.

Having considered the rival contentions, we do not

find any merit in the present appeal. The appellant cannot be allowed to challenge the jurisdiction of the One Man Committee, to which the matter was referred pursuant to the order of a Division Bench of this Court in the case of the petitioner himself, to contend that the said Committee could not originally consider the matter and go behind the initial order of termination, which was only on the ground of the procedure not being followed, and holding the petitioner unsuited on the ground of him not possessing the qualification, is totally misconceived. In the ***State of Bihar vs. Sohan Roy*** (supra) the relevant terms of reference are reproduced below for ready reference:-

“8. XXXXX

(a) XXXXX

(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) XXXXX

(d) XXXXX

(e) XXXXX

(f) XXXXX

(g) XXXXX

(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) XXXXX

(k) XXXXX

(l) XXXXX

(m) XXXXX

(n) XXXXX

(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) XXXXX

(q) XXXXX”

Thus, it is clear that the One Man Committee had the mandate to look into all facets including legality of the initial engagement of the appellant. In the present case, the One Man Committee has clearly held that the prescribed qualification for appointment as Basic Health Worker was Second Division Matriculate in science and before appointment he had to undergo a crash programme of ten and a half months intensive training. In a decision of a Division Bench of this Court in the case of **Rajkishore Prasad v. State of Bihar & Ors. (C.W.J.C. No. 2677 of 2003)**, it was held that the Basic Health Worker was a technical post to which appointment cannot be made without requisite qualification. The said report further states that the appointment of the petitioner was also in violation of the constitutional mandate of Articles 14 and 16 of the Constitution of India. These basic facts have not been controverted by the

appellant and in view of the decision of a Full Bench of this Court in the case of **Ram Sevak Yadav** (supra), we have no hesitation to hold that the service of the appellant cannot be regularized. The decision referred to by the learned counsel for the appellant in the case of **State of Bihar vs. Binay Kumar Singh** (supra) are different to those of the present case and thus no advantage can be taken by the appellant on the basis of such decision. The issue with regard to discrimination has been rightly dealt in detail by the learned Single Bench and it has been held that there has been no such discrimination and also that Article 14 has no negative application.

Accordingly, we find no ground to interfere in the order of the learned Single Bench and the Letters Patent Appeal stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree

(Hemant Gupta, J)

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