

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2529 of 2011

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Prakash Prasad, son of Late Ram Sharan Prajapat, resident of village –
Maranpur, P.S. – Civil Lines, District – Gaya.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Department of Health, Media Education and Family Welfare, New Secretariat, Vikash Bhawan, Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The Regional Deputy Director, Health Services, Magadh Division, Gaya.
5. The Civil Surgeon-cum-Chief Medical Officer, Aurangabad.
6. The Deputy Superintendent, Sadar Hospital, Aurangabad.
7. The Incharge, Medical Officer, Aurangabad, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s	: Mr. Anjani Kumar Jha, Advocate
For the State	: Mr. Manoj Kumar Sinha, AC to G.A.9
For the Intervenor	: Mr. Banwari Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 30-01-2018

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. Interlocutory Application No. 601/2018 has been filed by one Umesh Prasad Srivastava with a prayer to allow him to intervene in the present writ application, as according to him, by disposal of this writ application in terms of the prayer made herein, the other similarly situated persons are likely to be affected. He claims himself to be an employee



of the Health Department appointed by proper authority and working as such from the date of his appointment till date.

3. there is a vague statement that the petitioner working is challenged in the writ application with respect to power and functioning of the different authorities, however, learned counsel representing the intervener applicant is unable to demonstrate that as also how he will have any cause of action to intervene in the present writ application. It is not clear from the reading of the Interlocutory Application that the Intervener applicant is likely to be affected by any order which will be passed in the present writ application.

4. In these circumstances, Interlocutory Application No. 601/2018 cannot be entertained and is accordingly rejected.

5. Petitioner, in the present writ application, has prayed for a writ in the nature of certiorari to quash the order bearing No. 588(4) dated 19.04.2010 as contained in Memo No. 854(4) dated 21.05.2010, as contained in Annexure-20 to the writ application. A further prayer has been made to direct the competent authority to reinstate the petitioner on his respective post with all consequential benefits for which he may be legally entitled.



6. The case of the petitioner is that pursuant to an advertisement, being eligible for consideration, he applied for the post of Night Guard on temporary basis and was selected accordingly. The petitioner submitted his joining in the concerned office on 22.04.1985. His service was extended till further order under the order issued by Regional Deputy Director, Health Services, Magadh Division, Gaya. He has brought on record Annexure-3 & 4 to the writ application to strengthen his claim that he was also transferred as well as posted as Peon in the Office of Drug Inspector, Aurangabad by an order issued vide Memo No. 442 dated 30.06.1985. It is his case that he was absorbed in pursuance of Regional Deputy Director, Magadh Division, Gaya vide his letter no. 764 dated 16.10.1985 and he had been posted at Sadar Hospital, Aurangabad against the vacant post of Health Worker.

7. He further claims that he was also granted time bound promotion but all of a sudden on 22.11.2002 after a long gap of about 17 years the respondent Civil Surgeon cum Chief Medical Officer, Aurangabad issued a show cause notice to the petitioner stating that in the enquiry his initial appointment was found to be doubtful and accordingly the petitioner was directed to file reply latest by 12.12.2002. On



submission of his reply to the said show cause notice, a second show cause notice was also issued, which he again replied vide Annexure-11 dated 05.02.2003. Thereafter, the petitioner was terminated from service by an order issued vide Memo No. 1474 dated 28.06.2003 (Annexure-12).

8. The said order was further stayed by this Court in CWJC No. 7366/2003 and the petitioner again submitted his joining. It appears that this Hon'ble court on 26.06.2006 disposed of the petitioner's writ petition i.e. CWJC No. 7366/2003 along with LPA No. 946/2003 preferred by the State and other writ petitions with an observation/direction to the State of Bihar to consider the case of petitioner and others in the light of the judgment passed by the Hon'ble Supreme Court in the Case of *Secretary, State of Karnataka Vs. Uma Devi* reported in *2006(2) PLJR (SC) 363*.

9. Thereafter, on 03.01.2009, the respondent, Civil Surgeon, issued an order by which the petitioner had been dismissed from his service but without affording any opportunity to the petitioner to be heard or to explain the genuineness of his appointment letter which was issued on 20.04.1985. A copy of the order dated 03.01.2009 has been brought on the record as Annexure-17 to the writ application.



It is further stated that pursuant to a direction of this Hon'ble Court, an Enquiry Committee under the Chairmanship of the Director-in-Chief, Health Services, was constituted to consider the decision already taken earlier and the said Committee also without giving any opportunity to the employees effected either by general notice or notice to particular employee held the appointment of the petitioner forged/illegal which the petitioner has assailed on the ground that it does not contain any reason.

10. The petitioner seems to have moved this court once again vide CWJC No. 1975/2009, which was disposed off vide order dated 10.02.2009, passed by the learned Single Judge of this Court, with a direction to the petitioner to file a fresh representation to the Secretary of the Department, wherein the petitioner may enclose all of his relevant documents by way of evidence, and the Secretary, upon receipt of the said representation along with a copy of the order was directed to pass a firm, clear and speaking order. A copy of the order passed in CWJC No. 1975/2009 has been placed in the writ application as Annexure-18. A reading of the said order would show that this Court did not approve the procedure adopted by the respondent for terminating the



services of the petitioner.

11. It is pursuant to the said order that a representation was filed by the petitioner vide Annexure-19 dated 13.04.2009, on which, the order dated 19.04.2010, as contained in Annexure-20, has been passed, by which the appointment of the petitioner has been declared illegal.

12. Learned counsel for the petitioner while assailing the impugned order submits that in fact identical issues arose for consideration before this Court in several writ petitions. Earlier, some of the writ petitions were allowed by setting aside the order of termination in respect of those petitioners. Against the orders passed in the writ application, the State preferred L.P.A. No. 230/2011 (State of Bihar vs. Vinay Kumar Singh) and other analogous cases decided on 29.03.2011, the Hon'ble Division Bench of this Court dismissed the L.P.As. filed by the State Government. It appears that because the said Hon'ble Division Bench order was not brought to the notice of the learned court in the case of *State of Bihar through Chief Secretary vs. Madhu Kumari* reported in **2015(2) PLJR 378**, the another co-ordinate Bench of this Court allowed the appeal filed by the State Government and set aside the order passed in the writ petition.



13. Recently in L.P.A. No. 1518/2010 and other analogous matters, while hearing some of the appeals preferred by the State of Bihar, Hon'ble Division Bench of this Court discussed the earlier judgments and the conflicting one, then finally came to a conclusion that once the co-ordinate Bench of this court in L.P.A. No. 230/2011 (State of Bihar vs. Binay Kumar Singh & Ors.) and other analogous cases has dismissed similar appeal filed by the State Government, there is no ground to make any further indulgence into the matter particularly when the litigation policy of the State Government warrants that once benefit is granted in similar case the same should be followed in all other cases.

14. Another recent order dated 11.12.2017 passed by Hon'ble Division Bench of this Court in L.P.A. No. 198/2015 has been placed before me in course of hearing to demonstrate that this has been consistent view of the Hon'ble Division Bench that the appeal preferred by the State of Bihar should be dismissed. Submission is that the order of the writ court allowing all the writ petitions similarly situated to that of the present petitioner has been upheld, the same benefit should accrue to the present petitioner as well.

15. Today, a supplementary counter affidavit has



been filed on behalf of the respondent no. 3 which has been sworn by the Addition Director, Health Services, Bihar, Patna. The supplementary counter affidavit has been filed in compliance of the order of this Court passed on 11.12.2017. The affidavit nowhere states that the case of the present petitioner is different from those which have earlier been decided in which the decision rendered by the learned Single Judge of this Court has been upheld by the Hon'ble Division Bench. I am told that a Special Leave Petition preferred by the State against the order of the Hon'ble Division Bench passed in L.P.A. No. 230/2011 was earlier dismissed. In paragraph 7 of the supplementary counter affidavit it has been admitted that most of such employees have been reinstated in service in the light of Hon'ble Court's order.

16. In the facts and circumstances which have been discussed hereinabove, it appears to me that there is no denial of fact in course of hearing of the writ application that the case of the petitioner is identically situated, it is rather an admission on the part of the State respondents in paragraph 7 of the supplementary counter affidavit that such other employees have been given benefit of the order passed by this Hon'ble Court.



17. If this is the position then following the observations of the Hon’ble Division Bench in L.P.A. No. 1518/2010 and other analogous matters, I would set aside the impugned order, as contained in Annexure-20 to the writ application, and shall direct the competent authority to consider the case of the petitioner giving the same benefits which have been granted to the identically situated persons. The Hon’ble Division Bench has taken note of the fact that in fact in terms of the litigation policy of the State Government itself once benefit has been granted in similar case to one person the same should be followed in case of others as well.

18. This Writ Application is allowed, accordingly to the extent indicated hereinabove.

19. The authorities will pass necessary consequential orders within a period of two months from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2018
Transmission Date	NA

