

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1860 of 2017

In
Civil Writ Jurisdiction Case No.7976 of 2015

-
-
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.

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravi Kumar (Ac to AAG-13)
For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-07-2018

Seeking exception to an order passed by the learned Writ Court on 06.02.2017 in C.W.J.C. No. 7976 of 2015, this appeal has been filed by the State Government, primarily emphasize overwhelmingly on a judgment rendered by a Division Bench of this Court in the case of the **State of Bihar & Ors. Vs. Madhu Kumari & Ors.- 2015 (2) PLJR 378.**

Having heard learned counsel for the parties, we are of the considered view that the aforesaid judgment of the



learned Writ Court will not apply in the facts and circumstances of the present case. The judgment in question deals simply with the issue of regularization of employees in the light of the law laid down by the Supreme Court in the case of **Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.-(2006) 4 SCC**

1. That is a general law with regard to regularization of employees and in the case in hand the case of the respondent-petitioner Sri Satya Narayan Mandal is entirely different. He was initially appointed and brought in the regular category as a temporary employee. His name appeared at Serial No. 3 of Kandika -3 of a memo issued by the Civil Surgeon cum Chief Medical Officer, Katihar on 12.12.2014 and thereafter in pursuance to certain decision he was transferred to another area and while working in the said area, his services were terminated.

The learned Writ Court has taken note of all these aspects of the matter and has distinguished the case of the present respondent in the light of the fact that the Inquiry Report, the fact about his earlier assignment of temporary duties and consideration for temporary duties were not considered and finding his case to have not been properly considered, the Writ Court has interfered into the matter. The following findings recorded by the learned Writ Court may be taken note of to



distinguish the present case from the other cases:-

“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 given 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.”

We find that the report of the committee was not forwarded to the present petitioner-respondent herein Sri Satya Narayan Mandal and the Committee did not hear him also. These being the reasons that weighed with the Writ Court, as is evident from the impugned order, we see no reason to make any indulgence into the matter.

The Letters Patent Appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-R.S.Sen

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.08.2018
Transmission Date	

