

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17172 of 2010

=====

Panna Prasad Singh S/o Sri Jawahar Prasad Singh R/o Village- Malldiha, P.S.-
Barhara Kothi, District- Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. Director-In-Chief, Health Services, Bihar, Patna
3. Regional Deputy Director, Health Services Koshi Division, Saharsa
4. Civil Surgeon-cum-Chief Medical Officer, Purnea
5. Civil Surgeon-cum-Chief Medical Officer, Saharsa

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. BAIDYA NATH THAKUR

For the Respondent/s : Mr. Rakesh Kumar Ranjan, A.C. to G.A.-5

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23-08-2018

The present writ petition has been filed for quashing the order dated 11.10.2004, whereby and where under the services of the petitioner has been terminated, treating his appointment to be illegal. The petitioner has further prayed for quashing of the One Man Enquiry Committee report dated 09.08.2010 passed in Case No. 79 of 2010.

The case of the writ petition is that in the month of October, 1985 the Civil Surgeon-cum-Chief Medical Officer, Saharsa published an advertisement on the notice board for appointment of clerk on daily wages under the Leprosy Abolition Programme, pursuant whereof the petitioner had applied and then he was appointed as a clerk on daily wage basis in Raghopur Primary Health



Centre, Saharsa under the said programme, however, subsequently the petitioner was retrenched from service. It is the case of the petitioner that the Deputy Director, Health Services, Government of Bihar, Patna by letter dated 02.05.1986 directed the petitioner and six others to be absorbed against the sanctioned vacant post and then the services of the petitioner was absorbed by a letter dated 13.08.1986. In the year 1983, the genuineness of the appointment was doubted and his salary was stopped and pursuant thereto the Deputy Director, Ceiling, Purnea was authorized by the Commissioner, Purnea Division, Purnea for holding an enquiry and thereafter an enquiry was held and the enquiry report dated 18.07.2000 was submitted wherein the appointment of the petitioner was found to be illegal since the process of selection had not been followed. Thereafter, the respondent no. 4 vide Memo dated 20.10.2000 had issued a show cause to the petitioner as to why his services be not terminated on account of his appointment being illegal. The petitioner had submitted his reply whereafter the respondent no. 4 had terminated the services of the petitioner with immediate effect vide Memo dated 11.10.2004. The petitioner had challenged the said order of termination in CWJC No. 14880 of 2004 and the said writ petition along with other writ petitions were disposed of by an order dated 26.06.2006 with a direction to the respondents to consider the case of



all the affected employees with a view to find out as to which of them are fit for regularization in terms of the judgment rendered by the Hon'ble Apex Court in the case of *Secretary, State of Karnataka vs. Uma Devi & ors.* reported in (2006) 4 SCC 1. The respondents had then constituted a committee to enquire about the genuineness or otherwise of the appointment of all the affected employees including the petitioner herein. The Committee had enquired into the matter but when no decision was being taken with regard to the case of the petitioner herein he filed another writ petition bearing CWJC No. 2111 of 2008, which was allowed by this Court by a judgment dated 06.10.2009 and the impugned enquiry report was quashed with a direction to reinstate writ petitioners. The said judgment dated 06.10.2009 was challenged by the respondents by filing an appeal bearing L.P.A. No. 171 of 2010 and the learned Division Bench of this Court by a judgment dated 11.02.2010 passed in the said L.P.A. No. 171 of 2010 and other analogous cases disposed of the said appeals by a consent order, whereby and where under the following directions were issued:-

- “(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.”

Thus in nutshell, the position which emerges, upon passing of the aforesaid judgment dated 11.02.2010 by the learned Division Bench, is that the order passed in favour of the petitioner herein by the learned Single Judge regarding his reinstatement into the service stood nullified and a One Man Committee of Hon’ble Mr. Justice Uday Sinha, a retired Judge of this Court, was constituted to look into various facets of nature of appointments that were given to the writ petitioners with a view to adjudicate the legality of their appointments and genuineness in service. The case of the petitioner was also taken up for hearing by the aforesaid One Man Committee and his case was numbered as Case No. 79 of 2010, however, the aforesaid One Man Committee by an order dated 09.08.2010 has rejected the case of the petitioner primarily on the ground that the appointment of the petitioner is illegal which was made *de hors* the rules as also his absorption is illegal and irregular.

The learned counsel for the petitioner has submitted that the petitioner has been absorbed by the respondents vide letter dated 13.08.1986 and he has rendered services for more than 18 years as



also similarly situated persons are still working, as such the petitioner is fit to be reinstated in service. The learned counsel for the petitioner has further relied upon the judgment of the learned Division Bench dated 29.03.2011 passed in L.P.A. Case 230 of 2011 to contend that in similar cases the letters of termination of similarly situated employees has been quashed by this Court relying upon the judgment rendered by the Hon'ble Apex Court in the case of *State of Karnataka & Ors. vs. M.L. Kesari & Ors.* reported in (2010) 9 SCC 247.

I have heard the learned counsel for the parties and perused the materials on record. Firstly, it would be appropriate to deal with the submission made by the learned counsel for the petitioner to the effect that the present case is similar to the one in which the learned Division Bench has rendered the judgment dated 29.03.2011. In this regard, this Court finds that the submission of the learned counsel for the petitioner is misplaced inasmuch as in the said case, the enquiry report of a Five Men Committee was under consideration and the same was set aside on the ground that only three members of the Committee had signed the said report, hence in absence of signature of rest of the two members of the Committee, the Court was of the opinion that such a report cannot be acted upon in a proper manner. Moreover, the aforesaid case relied upon by the petitioner herein and the present case stand on an absolute different footing inasmuch as in the present case



i.e. the case of the petitioner herein, the petitioner has consented to the judgment passed by the learned Division Bench which is dated 11.02.2010, as mentioned hereinabove, for the purposes of being relegated to the jurisdiction of the One Man Enquiry Committee constituted by the learned Division Bench as well as he has consented to the fact that the judgment dated 06.10.2009 passed by the learned Single Judge of this Court quashing the order of termination of the petitioner herein stands nullified. Thus in nutshell, the position is that the present case of the petitioner was made fully dependent upon the outcome of the report of the One Man Enquiry Committee by the learned Division Bench by a judgment dated 11.02.2010 and now since the case of the petitioner herein has been rejected by the One Man Enquiry Committee headed by an Hon'ble retired Judge of this Court, who has held the appointment/absorption of the petitioner to be illegal, which the petitioner has not been able to assail on any cogent ground whatsoever, an end is required to be put to the litigation being engaged in by the petitioner herein at various points of time. It is pertinent to mention that the learned counsel for the petitioner has not been able to demonstrate any infirmity in the order/report of the One Man Enquiry Committee dated 09.08.2010, as far as the petitioner herein is concerned and further no material has been brought on record or otherwise to show that the petitioner was legally



appointed/absorbed.

In any view of the matter, the petitioner is out of service since several years, hence there is no question of any sympathetic consideration especially on account of the fact that an illegality cannot be perpetuated by this Court.

Having considered the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds no merit in the writ petition, hence the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2018
Transmission Date	

