

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1258 of 2016

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Mathura Nath Champai (Retired), Son of Late Madho Prasad, Basic Health Worker,
Primary Centre, B.Kothi, District Purnea at present resident of Village- Sundi
Bigha, P.S. Ekangar Sarai, District- Nalanda Biharsharif.

.... Appellant/s

Versus

1. The State Of Bihar through the Health Commissioner-cum-Principal Secretary
Department of Health, Bihar, Patna.
2. The Director-in-Chief, Health Services, Bihar, Patna
3. The District Magistrate, Purnea.
4. The Civil Surgeon-Cum-Chief Medical Officer, Purnea.
5. The In-Charge Medical Officer, Primary Health Centre, B. Kothi, District -
Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sarmod Ranjan Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 04-07-2018

This Intra-Court appeal has been preferred for setting
aside the judgment dated 27.04.2016 passed by the learned Writ Court
in Civil Writ Jurisdiction Case No.7572 of 2014. By the impugned
judgment, the learned Writ Court while taking into consideration the
facts and circumstances under which initially the appointment of the
petitioner was found to be illegal, but then the One Man Committee
headed by Justice Uday Sinha (retired) giving a finding in the case of
the petitioner that the engagement or appointment of the petitioner
was irregular gave him an opening to come back in service, refused to



grant reliefs directing for payment of salary to the petitioner for the period of dismissal.

The grievance of the appellant before this Court is that once the order of dismissal of the petitioner was not found sustainable and One Man Committee headed by Justice Uday Sinha (retired) termed his appointment as merely irregular he would become eligible and entitled for payment of salary for the period during which he remained under dismissal.

In sum and substance the appellant is seeking payment of back wages. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors.** reported in **2013(10) SCC 324**. It is submitted that the learned Writ Court could not appreciate that once the dismissal of the appellant has been held not just and proper and One Man Committee of Justice Uday Sinha (retired) held that his case should be treated as irregular one for various reasons, the ratio of the judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase** (supra) was required to be followed.

On the other hand, learned counsel representing the State has opposed the challenge to the judgment of the learned Writ Court. It is submitted on behalf of the State that a bare perusal of the



findings recorded by Justice Uday Sinha Committee would show that the Committee found it true that the exercise for selection on the post of Basic Health Worker was not carried out and only because the appellant had undergone the training and had been found to be a differently able person despite the fact that even though the rules for appointment were not followed in his case, the Committee felt inclined to put his case in the category of irregular appointments. It is submitted that the payment of back wages, even in terms of the judgment of the Hon'ble Supreme Court is not automatic. It is thus submitted that the impugned order dated 23.01.2014 passed by the Civil Surgeon, Purnea, as contained in Annexure-7 to the writ application, has rightly not been interfered with by the learned Writ Court.

Having heard learned counsel for the petitioner-appellant and after going through the averments made in the writ application, we find that the learned Writ Court has for the purpose of rejection of the claim of the petitioner given the following reasons in the impugned judgment:-

“The appointment of the petitioner is not without controversy. The Court cannot shut its eyes in the manner in which the engagement or appointment of the petitioner was made, which led to passing of the previous orders of dismissal and thereafter on a reference having been made to a One-Man-



Committee the status of the engagement of the petitioner was lebeled as irregular. In view of the chequered history of engagement of the petitioner, being not free from controversy and taint, the petitioner has been given lease of life, by virtue of the opinion rendered by a One-Man-Committee. This is not one of those cases, where petitioner is required to be compensated or rewarded for the period of termination. The order of termination was passed on the ground that it was a case of illegal appointment, which is now being termed as irregular. If the petitioner was a substantively appointed government servant without any controversy as to the nature of his engagement and appointment, an illegal termination generally is visited with a direction for payment of salary, when that order is set aside. But the facts of the case of the petitioner, being such, this Court is not enthused to pass any order, making any direction for payment of salary for the period of termination in the case of the present petitioner.

The respondents have also brought on record the similar opinion or view expressed in a batch of writ applications, passed by a Learned Single Judge, a copy of which is Annexure-C to the counter affidavit.”

In the given facts and circumstances of the case, we are not inclined to interfere with the impugned judgment of the learned Writ Court. The issue of payment of back wages has to be considered keeping in mind the facts and circumstances of the case, which cannot



be an automatic fall out. This Court does not find any unreasonableness in exercise of its discretion by the learned Writ Court.

This Letters Patent Appeal has, thus, no merit and it is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

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