

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4369 of 2013

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Upendra Sharma S/O Late Tapeswar Sharma R/O Villge- Singhari, P.O.-
Singhari, P.S.- Goh, District- Aurangabad

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE COMMISSIONER-CUM-SECRETARY HEALTH DEPARTMENT,
GOVT. OF BIHAR, PATNA
3. THE DIRECTOR-IN-CHIEF HEALTH DEPARTMENT, GOVT. OF
BIHAR, PATNA
4. THE JOINT DIRECTOR, HEALTH DEPARTMENT, GOVT. OF BIHAR,
PATNA
5. THE REGIONAL DEPUTY DIRECTOR HEALTH SERVICE, MAGADH
DIVISION, GAYA
6. THE CIVIL SURGEON-CUM-CHIEF MEDICAL OFFICER,
AURANGABAD, NAWADA
7. THE ADDITIONAL CHIEF MEDICAL OFFICER, AURANGABAD,
NAWADA
8. THE CHAIRMAN, HON'BLE JUSTICE UDAY SINHA, ONE MAN
ENQUIRY COMMITTEE 42, HARDING ROAD, PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shree Kant Pandey
For the Respondent/s : Mr. Chittaranjan Sinha, PAAG2
Mr. Shailendra Kumar, AC to PAAG2

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-01-2018

This application under Article 226 of the Constitution of India has been filed for setting aside the order dated 27.1.2012 passed in Case No. 22 of 2011 by Chairman, One Man Enquiry Committee, Patna, by which termination of petitioner after 17 years of service as Health Servant (Class-IV post) is held legal and valid and further direction to the respondent authorities to reinstate



petitioner in service in view of order dated 29.3.2011 passed in LPA No. 230 of 2011.

Briefly stated facts of the case is that petitioner was temporarily appointed as Health Servant (Class IV) post on payment of Rs.50/- per month to facilitate family planning work on 12.12.1988 by Additional Chief Medical Officer, Aurangabad. Subsequently, vide Memo dated 26.3.1990 issued by the Regional Deputy Director, Health Service, Magadh Division, Gaya, who is the competent authority, petitioner was appointed on regular post of Health Servant (Class IV) in the pay scale of Rs.775/--1025/- per month. Petitioner was posted against vacant post of Health Servant at PHC, Meskor, Nawada, vide Memo dated 22.4.1990. The appointment of petitioner was cancelled by office order dated 16.1.1992 issued by Civil Surgeon cum Chief Medical Officer, Nawadah, on the ground of irregular appointment in which name of petitioner figured at serial no. 35. Against which civil writ petitions were filed and pursuant to order passed by Hon'ble Patna High Court petitioner was reinstated on 30.4.1993. The service of petitioner was again terminated vide Memo dated 13.8.2003 on the ground that the initial appointment was illegal as same was made without any advertisement or name being sponsored by the Employment Exchange and without following reservation policy.



Petitioner challenged the order of termination dated 13.8.2003 in C.W.J.C. no. 10661 of 2003 which was heard along with batch cases, i.e., L.P.A. No. 946 of 2003 and other analogous cases which was disposed of on 26.6.2006 and the matter was referred to the Committee to examine and pass order.

A counter affidavit is filed in which the stand has been taken by the respondents that petitioner was appointed on Class IV post by R.D.D. Health Service, Magadh Division, Gaya, without following any procedure for selection.

Pursuant to order dated 26.6.2006 petitioner filed representation before the Director-in-Chief, Health Department, Govt. of Bihar, Patna, (Respondent no. 3) with all documents before Five Men Committee constituted by the Government which categorized the employees in three categories, viz. (1) irregular, (2) illegal and (3) forged. The petitioner was categorized as illegal appointee. A report was submitted on 31.12.2008 and being aggrieved by the said order petitioner filed C.W.J.C. no. 8492 of 2009 and after hearing the parties the order of termination was set aside by order dated 6.10.2009. State of Bihar filed LPA no. 596 of 2010 and same was disposed of on 26.3.2010 in light of order dated 11.2.2010 passed in LPA no. 1623 of 2009 and analogous cases. Pursuant to order dated 26.3.2010 passed in LPA no. 596 of



2010 petitioner filed a case bearing Case no. 22 of 2011 which was dismissed vide order dated 27.1.2012 by Chairman , One Man Enquiry Committee which has been impugned in this writ petition.

Learned counsel for the petitioner has submitted that petitioner was appointed by a competent authority on a vacant sanctioned post and had requisite qualification for the said post, as such, his appointment is irregular appointment and not an illegal appointment.

A counter affidavit has been filed on behalf respondent nos. 6 and 7 in which it has been stated that Dy. Director, Health Services, Magadh Division, Gaya, has no right to appoint petitioner on a regular service of Class-IV post without any advertisement or his name not being sponsored by Employment Exchange. The State Government vide order dated 3.12.1980 has issued guidelines regarding appointment in Class III and Class IV posts. According to which, appointment has to be made from the District Panel and the panel will be prepared by the Selection Committee headed by the District Magistrate. On the direction of Chief Secretary to enquire into appointment made by Civil Surgeon cum Chief Medical Officer, Nawadah , appointment of



petitioner was cancelled on the ground of being illegal appointment. The respondents in para-10 of their counter affidavit have stated that petitioner was earlier working as voluntary worker and thereafter his service was categorized as Class-IV post by the then R.D.D., Gaya. It has further been submitted that against the order and report of Five Men Committee dated 31.12.2008, a writ petition being C.W.J.C. no. 8192 of 2009 and analogous cases were decided by order dated 6.10.2009 and termination order was quashed. State Government filed LPA no. 596 of 2010 and by order dated 26.3.2010 One Man Enquiry Committee was constituted and direction was issued to appear before that Committee and petitioner filed a case being Case no. 29 of 2011 before the One Man Enquiry Committee and same was dismissed by order dated 27.1.2012 which has been impugned in this writ petition.

Learned counsel for the petitioner has relied upon the judgment and order dated 19.1.2012 passed in C.W.J.C. no. 6254 of 2011 in which order passed by One Man Enquiry Committee declaring petitioner as an illegal appointee has been set aside in the writ petition. Relevant part of the writ order is extracted below:-

“ The Court fails to understand the rationale and reasoning given by One Man Enquiry Committee because there is a clear and categorical finding given therein that the



petitioner had been adsorbed in service and her services had been regularized. If that be so, then where is the question of going into her initial engagement or appointment or the so called finding that regularization is not a mode of appointment. Regularization may not be a mode of appointment but regularization is an evidence of association of person in his capacity as an employee, may be on daily wages, for a long period of time. It is the long association which creates some kind of right in favour of such person.

If the Superintendent of Sadar Hospital had years ago decided to regularize the services of the petitioner, there is no occasion for the One Man Enquiry Committee to declare that her termination is legal because no procedure had been followed.

In the circumstances, the impugned order contained in Annexure-9 is set aside. Direction is issued to the respondents to restore the services of the petitioner forthwith, if not already reinstated. This writ application is, thus, allowed."

In LPA filed by State of Bihar being LPA no. 1737 of 2010, the Division Bench has also upheld the order of the Single Judge and dismissed the LPA filed by State. Similar order has also been passed in LPA no. 1741 of 2010. The operative part of order dated 12.7.2011 is extracted below :-

"In view of the above law laid down, the order of termination of the petitioner is illegal. Admittedly, the petitioner has completed more than ten years of his service, as against the vacant post, appointed by the competent authority and was paid salary and was also given promotion after regularization cannot be said to be illegal, which differs from irregular appointment. The appointment of the petitioner also cannot be said to be irregular and as per law laid down in Uma Devi's Case in para 53 and M.L. Keshri's case. The petitioner was fully entitled for regularization of his service, therefore, his termination is bad in law.

The learned Single Judge has rightly allowed the writ petition and set aside the termination order. The petitioner shall be reinstated forthwith and salary shall be paid month to month regularly and arrears to salary shall be paid within four months. We fully agree with the judgment of the learned Single Judge. For the reasons recorded above, the appeal is devoid of merit.



Accordingly, this L.P.A. is dismissed.”

In view of judgment and order passed by this Court by a Single Judge which has been affirmed by the Division Bench, the order of termination of petitioner is not sustainable and is accordingly set aside. The petitioner shall be reinstated forthwith with all consequential benefits, however with 50% of back wages.

Writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	NA
Uploading Date	
Transmission Date	

