

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19790 of 2010

-
-
1. Makesh Sharma, S/O Late Yadunandan Sharma, R/O Vill.- Pitwans, P.S.- Naubatpur, Distt.- Patna
 2. Jwala Prasad, S/O Sri Banarsi Lal, R/O Vill.- Asthawan, P.S.- Asthawan, Distt.-Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Health, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. The Director-In-Chief, Health Services, Government of Bihar, Patna
4. The Regional Deputy Director, Health Services, Patna Division, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20586 of 2010

Arvind Kumar, S/O Late Suryadeo Singh, R/O Vill.-Bela, P.S.-Naubatpur, Distt.-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director-In-Chief, Health Services, Government of Bihar, Patna.
4. The Regional Deputy Director, Health Services, Patna Division, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20665 of 2010

Sheokant Chaudhary, S/O Late Ram Lagan Chaudhary, R/O Vill.- Kunjwa, P.S.- Bihta, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna
2. The Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna
3. The Director In Chief, Health Services, Govt. of Bihar, Patna
4. The Regional Deputy Director, Health Services, Patna Division, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra, Advocate



For the Respondent/s : Md. Nurul Hoda, Advocate
Mr. Prashant Pratap, GP-2,
Mr. Arun Kumar, AC to GP-1
Mr. Ashok Kumar Pathak, AC to GP-21

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 20-11-2018

Heard learned counsel for the petitioners and learned
counsels appearing on behalf of the State.

2. Since the issue with regard to the writ applications are
similar and same, for the sake of convenience the facts of CWJC
No. 19790 of 2010 is being taken up which would be applicable in
the other two writ applications as well.

3. Petitioners in the present writ application have sought
quashing of the judgment dated 01.07.2010, as contained in
Annexure-19, passed by One Man Enquiry Committee of Hon'ble
Mr. Justice Uday Sinha in Case Nos. 10/2010, 64/2010
respectively whereby the termination order of the petitioners dated
13.05.2003, as contained in Annexure-8, has been held to be valid.

4. Facts of the case is that an advertisement vide letter
No. 323 dated 27.04.1987 was issued on the notice board for
appointment of two Health Assistants, two Vaccinators and one
Cleaner. Petitioner no. 1 and petitioner in CWJC No. 20665 of
2010 were appointed on 30.05.1987 as Health Assistants.
Petitioner no. 2 was appointed on 20.06.1987 and petitioner in
CWJC No. 20586 of 2010 was appointed on 30.05.1987 on the



post of Vaccinator. However, an enquiry was held on 24.02.1989 vide Annexure-5 regarding irregularity in their appointment and the petitioners were asked to show cause. The petitioners filed their reply and was accepted by the Government. In the year 2002, the petitioners were asked to submit relevant information regarding their initial appointment and its validity and issued show cause on 05.02.2003 after 16 years of their service as contained in Annexure-6. Petitioners replied to the show cause but finding the same not satisfactory the termination order was issued on 13.05.2003, which is Annexure-8 to the writ application. All the petitioners were served with termination order on 13.05.2003 against which they represented before the authorities, which went unheeded and the petitioners moved this Court in CWJC No. 6045 of 2003, which was allowed on 08.09.2003 (Annexure-10) along with other analogous cases on the ground of violation of principles natural justice. Thereafter, the State preferred appeal, which was heard along with LPA No. 946 of 2004 and other analogous cases and this Court directed for enquiry for which a Five Men Committee was constituted but the enquiry report was signed by three men of the Committee, which was again challenged by the petitioners in CWJC No. 6575 of 2009 and was heard analogous to CWJC No. 2182 of 2008 and other analogous cases, which was



allowed by the learned Single Judge vide order dated 06.10.2009. Against the said order, the State preferred appeal which was heard along with LPA No. 1623 of 2009 and other analogous cases and disposed of vide order dated 11.02.2010 with direction to decide the matter by constituting a One Man Committee. In pursuance to the said order, One Man Committee of Hon'ble Mr. Justice Uday Sinha was constituted and the claim of the petitioners was considered in Case Nos. 10/2010, 64/2010 and 93/2010 respectively and One Man Committee found that the advertisement by wide publication was not issued in a regular manner, names were not invited from the employment exchange, Selection Committee was not legally constituted, reservation policy was not followed nor appointment was made by the competent authority and found the termination orders valid.

5. Learned counsel for the petitioners submits that the issue is no longer *res integra* as a Division Bench of this Court on 23.11.2017 while hearing LPA No. 1518 of 2010 and other analogous appeals have delved deep into the matter that in the case of similar persons who had been appointed in the year 1987, 1988, 1989 and whose services were terminated in the year 2003 relying upon the appeal being LPA No. 230 of 2011 in the case of The State of Bihar & Ors. vs. Binay Kumar Singh and other analogous



cases taking note of various provisions of law and the law laid down by Supreme Court in the case of *Secretary, State of Karnataka vs. Uma Devi and others* since reported in (2006) 4 SCC 1 and in the case of *State of Karnataka and others vs. M.L. Kesari and others* since reported in (2010) 9 SCC 247 has dismissed the appeals preferred by the State. He further submits that the Constitution of One Man Committee was also without the consent of the employees, which was found to be unsustainable by the Apex Court in Civil Appeal No. 6484 of 2011 and the Hon'ble Supreme Court by a detailed order passed on 8th of August, 2011 quashed and remanded the issue for fresh consideration on merit before this Court, and, accordingly, in LPA No. 1518 of 2010 and analogous appeals this Court dismissed the appeals and directed the State Government to proceed with the matter after conducting enquiry and affirmed the order passed in LPA No. 230 of 2011 dated 29.03.2011 and that the decision and observation rendered by the Division Bench in LPA No. 1518 of 2010 would squarely apply to the case of the petitioners. He further submits that recently the matter has been considered by a Single Judge of this Court in CWJC No. 2529 of 2011 in the case of Prakash Prasad vs. The State of Bihar and others, which was heard and decided on 30.01.2018 taking the consistent view that since some persons



have been regularised and other persons have been discriminated and left out and since the Division Bench in LPA No. 1518 of 2010 has taken into consideration the fact that in terms of the litigation policy of the State Government once benefit has been granted in a similar case to one person the same should be followed in the case of others as well.

6. Learned counsel for the State, on the other hand, vehemently urges and submits that the judgment passed by One Man Enquiry Committee cannot be faulted on any ground which was constituted in pursuance to the order of this Court in the earlier LPA and the decision taken by One Man Committee is valid. In this connection, he relies on the judgment of this Court in the case of *Ratnesh Kumar Singh vs. The State of Bihar & Ors.* since reported in *2015(3) PLJR 466* wherein the learned Single Judge has gone in detail on the similar issue and on similar facts held that merely putting a note on the notice board would not meet the requirement of Articles 14 and 16 of the Constitution. Mandatory compliance with the said constitutional requirement is to be fulfilled by open advertisement for such legal appointments. He further submits that even if some persons have been regularised but Article 14 of the Constitution of India is a positive right and cannot be enforced in a negative manner. If an illegality or



irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. He further submits that from the pleadings in the writ application it would transpire that the petitioners, who are out of service since 2003, have already attained the prescribed age of superannuation or are on the verge of superannuation. Hence, no relief ought to be granted to the petitioners at this stage.

7. Heard the learned counsels for the parties. Petitioners were initially appointed on different dates in the year 1987, a so called enquiry was held in the year 1989 regarding the validity of the appointment but was then abandoned. In the year 2003, the petitioners were asked to show cause regarding information about their initial appointment and validity of their appointment. The reply having not found favour with the State, termination order was issued which was challenged by the petitioners in CWJC No. 6045 of 2003, which was allowed. The appeal preferred by the State was heard analogous with LPA No. 946 of 2004 along with hundreds of analogous cases wherein this Court directed for enquiry by a Committee for which a Five Men committee was



constituted but the enquiry report was signed by only three members of the Committee which was again challenged by the petitioners and heard in a batch of writ applications with CWJC No. 2182 of 2008 which was again allowed by the learned Single Judge on 06.10.2009. On the appeal so preferred by the State being LPA No. 1623 of 2009 and other analogous cases, the matter was disposed of for constitution of One Man Committee and a One Man Committee of Justice Uday Sinha (Retd.) was constituted. The case of the petitioners was heard by One Man committee and the termination order was held to be valid, which is under challenge before this Court in the present writ application. One Man Committee so constituted has already been quashed by the Hon'ble Supreme Court by a detailed order dated 08.08.2011 holding that the constitution of One Man Committee without consent of the employees was unsustainable and hence the matter was remanded for reconsideration. In pursuance to which LPA Nos. 1518 of 2010, 1502 of 2010 and other pending cases have been decided on merit by the Division Bench vide order dated 23.11.2017 holding that since identical orders by the learned Writ Court has already been rejected by a coordinate Bench of this Court in LPA No. 230 of 2011 and other analogous cases, no ground is made out to grant further indulgence in the matter,



particularly when the litigation policy of the State Government warrants that once benefit is granted in a similar case, the same should be followed in all other cases.

8. At this juncture, the learned counsel for the State brings to the notice of this Court a Division Bench judgment of this Court in the case of *State of Bihar through Chief Secretary vs. Madhu Kumari* since reported in *2015(2) PLJR 378* wherein another coordinate Bench allowed the appeal filed by the State Government and set aside the order passed in the writ application. The said Division Bench decision in the case of Madhu Kumari (supra) would not come in the aid of the State as the Division Bench order passed in LPA No. 230 of 2011 in the case of State of Bihar vs. Binay Kumar Singh and other analogous cases decided on 29.03.2011 (wherein the State had preferred appeal against the order of the learned Single Judge whereby the termination order was set aside, has been dismissed) the Division Bench order in LPA No. 230 of 2011 has not been brought to the notice of the Division Bench in the case of Madhu Kumari (supra).

9. The case of Ratnesh Kumar Singh (supra) would also not come in the aid of the State as the order of the Division Bench in LPA No. 230 of 2011 was not brought to the notice of the learned Single Judge. Recently, a Single Judge of this Court in



CWJC No. 2529 of 2011 in the case of Prakash Prasad (supra) has considered the matter in its entirety and held that since the Division Bench of this Court in LPA No. 1518 of 2010 and other analogous cases has discussed the earlier judgments and the conflicting one and has finally come to the conclusion that once a coordinate Bench of this Court in LPA No. 230 of 2011 State of Bihar vs. Binay Kumar Singh and other analogous cases has dismissed similar appeal filed by the State, 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 as well.

10. Yet another recent judgment dated 17.05.2016, passed by the Division Bench of this Court in LPA No. 198 of 2015 has been placed during course of hearing to demonstrate that the consistent view has been taken by another Division Bench. The case of the petitioners being identically situated, following the observations of the Division in LPA No. 1518 of 2010 and other analogous matters, the impugned order dated 01.07.2010, passed in Case Nos. 10/2010 and 64/2010 and order dated 07.10.2010, passed in Case No. 93 of 2010 are set aside. The competent authority is directed to consider the case of the petitioners and pass



necessary consequential orders within a period of two months from the date of receipt/ production of a copy of this order giving the same benefit which has been granted to the identically situated persons, as in terms of the litigation policy of the State Government once benefit has been granted in a similar case to one person the same should be followed in the case of others as well.

11. The writ application is allowed to the extent indicated above.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.11.2018
Transmission Date	NA

