

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1542 of 2016

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Dinesh Prasad Sah Son of Radhey Prasad Sah Posted as B.H.W. Basic Health Worker , Primary Health Centre , Biraul Darbhanga ,Resident of Village-Bisanbhapur, Alloth, P.s Musrigharari, District Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director-in-Chief, Health Services, Government of Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer,District Madhubani
4. The Civil Surgeon-cum-Chief Medical Officer,District Darbhanga.
5. The Incharge Primary Health Centre , Biraul, District Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajoy Kumar Chakraborty, AOR 02631 Mr. Krishna Murari Rawt, AOR 02632
For the Respondent/s	:	Mr. Rakesh Ambastha, AC to AAG 7

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 17-01-2019 Heard learned Counsel for the petitioner and the
learned Counsel for the respondent State.

The petitioner was removed from the post of Basic Health Worker (BHW) under the order dated 9.12.1999. The petitioner's removal was on the basis of a show cause alleging that his initial appointment letter was forged. The order dated 9.12.1999 was challenged by the petitioner in CWJC No. 10742 of 2003. The same was heard along with LPA No. 946 of 2003 and on 26.6.2006 a committee was constituted by the Department for scrutinising the validity of appointment of the petitioner along with various others. In light of the observations in LPA No. 946 of 2003 the issue was scrutinised and many of



the removed BHWs were taken into service. However the petitioner could not get benefit from such scrutiny as the Committee was also of the opinion that the appointment of the petitioner was forged. In the circumstances the petitioner filed another writ petition in 2009. CWJC No. 15563 of 2009 filed by the petitioner was disposed of on 9.11.2011 with a liberty to file a representation in respect of his grievance before the Director-in-Chief, Health Services, Bihar. The order dated 9.11.2011 is being reproduced herein below as the action pursuant thereto is the subject matter of the instant proceeding:-

“These writ applications are, accordingly, disposed of with a liberty to the petitioners to file their individual separate representation giving full details of their manner and continuation of their appointment within a period of three months from today, which must be accompanied by their original appointment letter, whereafter, the Director-in-Chief of the Health Services will individually examine each and every case separately and would record his specific findings with regard to the alleged forgery in their appointment letter. He would also at the same time look into all other relevant aspects relating to the mode and manner of appointment and continuation of the



petitioners in service and pass a reasoned order while disposing of the representation of the petitioners.

It is, however, made clear that if the appointment letters of the petitioners are not produced by them and/or are found to be forged, there would be no question of their being reinstated in service but, if their appointments are found to be merely irregular, they would be entitled for reconsideration of their cases for reinstatement in service alike 91 others, who were also reinstated in service by the Director-in-Chief in his order contained in Memo No. 117 dated 20.9.2007 passed in view of the order of the Division Bench of this Court dated 26.6.2006 in LPA No. 946 of 2003 State of Bihar Vs. Purendra Sulan Kit reported in 2006(3)PLJR 386.

Such an exercise, however, must be completed by the Director-in-Chief within a period of six months from the date of filing of the representation by the petitioners enclosing their original appointment letter and a copy of this order.

With the aforementioned observations and direction, all these applications are disposed of."

Pursuant to the aforesaid order the issue was raised by the petitioner before the Director in Chief for consideration.



This time the exercise has resulted in rejection of the petitioner's claim by holding that the petitioner's appointment letter does not reconcile with the Issue Register maintained in the office, from which the appointment letter is alleged to have been issued. Merely by relying upon the entries made in the Issue Register the Director-in-Chief has arrived at a conclusion that the appointment letter of the petitioner can be considered to be forged. The findings of the Director-in-Chief is also being reproduced for the sake of convenience:-

“दिनेश प्रसाद साह, पिता—श्री राधे प्रसाद साह,
ग्राम— विश्वभरपुर, थाना—मुशरीधरारी, जिला— समस्तीपुर का
नियुक्ति पत्र में पत्रांक—1213 दिनांक— 01.07.1987 दर्शित है
परन्तु सिविल सर्जन, मधुबनी के पत्रांक—1483 दिनांक— 22.
09.1999 के द्वारा सूचित किया गया है कि उक्त पत्र
दिनांक—03.07.1987 को निर्गत है एवं अन्य विषय से संबंधित है
न की इनकी नियुक्ति से।

अतएव यह नियुक्ति ही फर्जी मानी जा सकती है।”

Counsel for the petitioner has relied upon a decision of the Apex Court in the case of **Subodh Kumar Prasad vs. State of Bihar & ors.** It is submitted that merely by looking at the Dispatch Register such a conclusion cannot be arrived at. The judgment of the Apex Court is very clear in this regard. In



that case also, the conclusion of the appointment letter being forged was arrived at merely by looking at the entry made in the Dispatch Register. Since the entry did not reconcile with the appointment letter the authority concluded that the appointment letter was forged. The Apex Court in the circumstances held as follows:-

“6. What should have been really examined in the case is the letter of appointment itself and not the mere registers which indicate despatch of letters. If the letter of appointment issued to the appellant was a fake one there was certainly a cause for disciplinary action, but not by merely looking to the register such conclusion could be inferred for numbers noted therein may have been as a result of mistake. Therefore, the inquiry should have been as to the actual nature of the order or the letter of appointment issued to the appellant. That inquiry was not done by the learned Single Judge.”

In view of the law as laid down by the Apex Court in the case of ***Subodh Kumar Prasad*** (supra) the submission of Counsel for the petitioner is worth consideration.

In the instant case also the actual nature of the letter of appointment issued to the appellant has not been examined by the authority and merely by relying upon the fact that the



appointment letter did not reconcile with the Issue/Dispatch Register, the authority has concluded the appointment order to be forged. Counsel for the petitioner has rightly submitted that only if a detailed enquiry had been made in to the issue and both the Dispatch Register as well as the appointment letter were considered then the correct and just position could be arrived at as to whether the entry made in the Dispatch/Issue Register was incorrect or whether the appointment letter of the petitioner was forged or false. The Director-in-Chief pursuant to the liberty granted in the proceeding arising out of CWJC No. 15563 of 2009 was required to examine the issue.

In view of the facts taken note of hereinabove this Court would conclude that the Director-in-Chief has not considered the matter in proper perspective. In view of the judgment of the Apex Court in the case of ***Subodh Kumar Prasad*** (supra) as well as the judgment of the Division Bench of this Court in the case of Birendra Kumar vs The State of Bihar & ors. In LPA No. 387 of 2013, relying upon the decision of the Apex Court in the case of ***Subodh Kumar Prasad*** (supra) , this Court would observe that the conclusion of the Director-in-Chief based on the entries made in the Issue/Dispatch



Register is unsustainable. The order of the Director-in-Chief dated 26.12.20013 containing such conclusion are therefore quashed. The issue is required to be looked into by the Director-in-Chief in light of the laid laid down by the Apex Court in the case of *Subodh Kumar Prasad* reported in *2013 (3) PLJR (SC) 187*.

Let fresh consideration be done expeditiously on the basis of the facts made available earlier by the petitioner. The Director-in-Chief should complete the exercise after giving due opportunity to the petitioner within a period of six months from the date of receipt/production of a copy of this order.

The writ petition strands disposed of.

(Madhuresh Prasad, J.)

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