

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20359 of 2010

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BHAGYA NARAYAN PANDEY S/o Late Ram Dayal Pandey, R/o Village-Sukki Mushaharniya, P.S.- Parihar, Distt.- Sitamarhi, Presently Posted As Basic Health Worker Terminated, Primary Health Centre, Parihar, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director-in-Chief Health Service, Government of Bihar, New Secretariat, Patna
3. The Director, Health Services Government of Bihar, New Secretariat, Patna
4. The Regional Director, Health Services, Muzaffarpur
5. The Civil Surgeon-cum-Chief Medical Officer, Sitamarhi, Distt.- Sitamarhi
6. The In-Charge Medical Officer, Primary Health Centre, Parihar, Distt.- Sitamarhi
7. The Investigation Committee through the Chairman-Cum-Director-in-Chief Health Service, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3391 of 2011

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AWADHESH KUMAR SINGH

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 20359 of 2010)

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar -Manglam, Adv.
		Mr. Ravi Ranjan and Mr. Kislay Raj, Adv.
For the Respondent/s	:	Mr.Narmadeshwar Jha Aag7
		Mr. Brajesh Kumar AC to AAG 4

(In Civil Writ Jurisdiction Case No. 3391 of 2011)

For the Petitioner/s	:	Mr.Mritunjay Prasad Singh, Adv.
For the Respondent/s	:	Mr.Tej Bahadur Singh, AAG 7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 21-02-2019

With the consent of the parties, both the cases having identical issue are being disposed of by a common order.



2. For convenience the fact of Bhagya Narayan Pandey is taken into consideration and whenever this Court would feel necessity will refer the fact from the connecting case.

3. In the present case, the petitioner-Bhagya Narayan Pandey is challenging the order dated 22.11.2010 passed by Justice Uday Sinha Enquiry Committee in Case No. 110 of 2010 whereby and whereunder the Committee was pleased to dismiss the case filed by the petitioner which was filed for quashing the investigation report of Investigating Committee submitted to the Government of Bihar wherein the Committee has recorded a finding that the petitioner has obtained the employment in fraudulent manner.

4. The short fact of this case according to the petitioner is, in the year January 1984, an advertisement was displayed in the notice Board in the office the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh and the applications were invited from the eligible interested person for appointment against the post of Pharmacist and Basic Health Worker.

5. In pursuance of advertisement displayed at the Notice Board of the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh, the petitioner submitted his application in the prescribed format annexing his relevant testimonials in support of



his application and after scrutiny of the applications, the petitioner was called for interview and accordingly he appeared before the Interview Board on the scheduled date and time, produced his testimonial for the verification.

6. On the basis of recommendation of the Selection Committee, the petitioner was appointed on the post of Basic Health Worker and one Chhedi Prasad Singh was appointed as Pharmacist and a letter was issued in this regard by the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh vide memo no. 6930 dated 30.07.1984 (Annexure-1).

7. In terms of the order of appointment, the petitioner joined at Primary Health Centre, Itkhor and was receiving the salary accordingly on the approval of Civil Surgeon-cum-Chief Medical Officer, Hazaribagh. The petitioner continued to discharge his duty with best of his capability, to the full satisfaction of authority concerned.

8. The Deputy Director, Health Services, Government of Bihar vide memo no. 1307 dated 31.12.1988 (Annexure-2) issued a letter whereby and whereunder the petitioner along with others were transferred at different places. The petitioner was transferred from Hazaribagh to Civil Surgeon-cum-Chief Medical Officer, Sitamarhi and after verification of the service record in context



with illegal appointment, the petitioner was allowed to join the place of posting in tern he joined the service but he was posted as Basic Health Worker at Primary Health Centre, Parihar. Accordingly he gave his joining at Parihar.

9. The Government received a lot of complaint with respect to illegal and irregular appointment in the Health Department, decided to hold enquiry with respect to all appointments made in the Health Department since 1980 and onward and accordingly the petitioner vide letter no. 2705 dated 15.07.1993 was directed to submit the all relevant records concerning his appointment by the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh and in pursuant thereto the petitioner has submitted his all relevant documents on 18.08.1993 concerning his appointment which was transmitted to Civil Surgeon-cum-Chief Medical Officer, Hazaribagh for verification and genuineness of documents submitted by the petitioner, but the petitioner was allowed to work and accordingly he was receiving the salary.

10. In the wake of general order issued by the Government of Bihar for the purposes of holding enquiry with respect to the illegality of the appointment in the Health Department, the Civil Surgeon-cum-Chief Medical Officer vide



letter no. 356 dated 21.01.2003 directed the petitioner to submit a show cause in respect of prescribed form within two weeks from the date of issuance of the order (Annexure-3).

11. The petitioner accordingly submitted his show cause in the prescribed form on 08.02.2003 in the office of Civil Surgeon-cum-Chief Medical Officer, Sitamarhi but later on, the Civil Surgeon-cum-Chief Medical Officer has again vide memo no.884 dated 22.02.2003 asked to submit the original records regarding his education qualification within three days from the date of issuance of order.

12. The petitioner has obeyed the order and submitted his education qualification in the office of Civil Surgeon-cum-Chief Medical Officer. It has been stated that the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi vide letter no. 954 dated 26.02.2003, sent the certificate of the petitioner to Civil Surgeon-cum-Chief Medical Officer, Hazaribagh to verify the genuineness and correctness of the appointment letter and other documents produced by the petitioner in support of his appointment as Basic Health Worker. The Civil Surgeon-cum-Chief Medical Officer, Hazaribagh issued a letter, vide letter no. 632 dated 13.03.2003, communicated the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi that the dispatch register of 1984 reflects that the



appointment letter was issued to the petitioner, but the same was not readily available in his office. Again the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi issued another letter no. 975 dated 07.04.2003 to verify the appointment letter as well as letter by which the confirmation was given of the legal appointment of the petitioner and the same was sent for verification vide letter no.25 dated 05.06.2003 (Annexure-7). On receipt of said letter, the Civil Surgeon-cum-Chief Medical Officer, Hazaribagh vide letter no. 1359 dated 23.06.2003 communicated the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi that the letter no. 975 dated 07.04.2003 is a forged document and his signature has been tampered and also informed that enquiry with respect to genuineness of appointment letter was going on.

13. On receipt of the aforesaid letter, the Civil Surgeon-cum-Chief Medical Officer, Sitamarhi vide letter no. 2472 dated 28.06.2003 has issued a show cause stating therein that the letter no. 975 dated 07.04.2003 by which the appointment of the petitioner was confirmed, was later on examined by Civil Surgeon-cum-Chief Medical Officer, Hazaribagh who vide letter no. 1359 dated 23.06.2003 which was received in the office on 25.6.2003 was informed to be forged and asked the petitioner to submit explanation within three days. Accordingly, the petitioner filed the



show cause on 05.07.2003 trying to justify his appointment to be valid and disputed the allegation of illegality committed by him.

14. On the basis of receipt of the letter and show cause of the petitioner, the Civil Surgeon-cum-Chief Medical Officer, vide memo no. 2691 dated 21.07.2003, has terminated the service of the petitioner from the date of issuance of the order. The same was challenged before this Court in C.W.J.C. No. 8186 of 2003 which was heard and disposed of on 08.09.2003, the order of termination was set aside giving a liberty for fresh consideration and the same was affirmed in L.P.A. No. 279 of 2004 and accordingly a Committee was constituted headed by Dr. Manoranjan Chaturvedi the then Director-in-Chief, Health Services set three conditions to testing the validity of the appointment letter. The Committee considered and found the appointment of the petitioner to be forged, which was challenged again before this Court in C.W.J.C. No. 7642 of 2009, which was heard and disposed of on 06.10.2009. The report of Enquiry Committee was set aside and direction was given for reinstatement with all consequential benefits, the same was challenged before the Division Bench in L.P.A. No. 248 of 2010 and that Division Bench constituted the Uday Sinha Committee to examine the correctness of appointment letter of this petitioner and other



employees and the Uday Sinha Committee has held that the petitioner was not possessing the requisite qualification of the post at the time of appointment so his application was rejected. A person having no requisite qualification cannot be appointed as a Basic Health Worker.

15. The counsel for the petitioner submits that the Uday Sinha Committee has committed a complete wrong on the premise that the appointment letter which was placed by the petitioner has never been communicated to be a forged and fabricated what has been held to be forged and fabricated is the letter no. 975 dated 07.04.2003 received by the Civil Surgeon-cum-Chief Medical Officer giving the verification report with respect to the appointment letter in favour of the petitioner. He has submitted that his appointment was legal and valid as he has entered into the service through the proper process of selection and his entry in service cannot in any manner be doubted on the fact that there is no negative finding with regard to genuineness of appointment letter of the petitioner whereas the counsel for the State has submitted that the manner selection has been made, the selection itself cannot be sanctified, reason is that in a matter of public appointment, the authority was required to issue proper advertisement through the newspaper or could have obtained the



names of the persons from the employment exchange giving the knowledge to the public so that other persons could have participated in the selection process, but the purported notice was pasted on the notice board of the Civil Surgeon-cum-Chief Medical Officer and his entry has been made and there was no record available in the office of Civil Surgeon-cum-Chief Medical Officer, Hazaribagh about the testing of the verification of the appointment of the petitioner. It has further been submitted that when the petitioner was not holding the requisite qualification at the time of his selection as Basic Health Worker, in such circumstance, the appointment itself is void. Any appointment dehors to the rule, cannot be sustained.

16. Having considered the rival contentions of the parties, the law is very much clear that if entry of a person through illegal manner or illegal procedure has been adopted, the same cannot be sustained, as it will not be treated to be a valid appointment letter and its status will be nothing but a back door entry in the service. Any entry in the back door cannot be said to be a valid appointment and at any stage, the same can be taken away. The person, who entered into the service through back door method, should be expelled from that door alone. The issue is no longer *res integra* as having been decided in the case of Uma Devi



(3) vs. Secretary, State of Karnataka reported in (2006) 4 SCC 1 and Ram Sevak Yadav and Anr. vs. the State of Bihar and others reported in 2013 (1) PLJR 964 and recently with regard to recruitment and appointment made in the Health Department has been considered by the Hon'ble Supreme Court in the case of State of Bihar vs. Kirti Narayan Prasad reported in 2019 (1) PLJR 102 wherein the Hon'ble Apex Court has held that a person appointed in illegal manner is a void *ab initio* and their continuation and regularisation does not arise.

17. On perusal of record it appears that the entry of the petitioner is not in valid manner on account of the fact that admittedly there was no advertisement in a proper manner, save and except, as has been stated in the notice board in the office of Civil Surgeon-cum-Chief Medical Officer, Hazaribagh, cannot be said to be a valid notice, as the basic purpose of the notice of advertisement to disseminate the information to all the interested person could have participated in the selection process. In absence of those process, the entire selection process suffers from illegality and it also does not appear that who were the members in the Selection Committee for recommending the name of petitioner, nor any document has been brought to show that any interview letter was issued to the petitioner.



18. This Court is of the view that the entry of the petitioners are complete a back door matter does not aspire trustworthiness to the Court and that too in a situation when the petitioners were admittedly not holding the requisite qualification has been found by the Uday Sinha Committee which has not been disputed by the counsel for the petitioner.

19. In such view of the matter, this Court does not find any merit. Accordingly both the writ applications are dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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