

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17841 of 2010

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Dhurandhar Singh, son of late Mangal Singh, resident of Village- Hansrajpu,
P.S.- Ekma, Distt.- Saran Chapra

... .. Petitioner

Versus

1. The State of Bihar
2. The Commissioner Cum Secretary Health Department, Government of Bihar, Patna
3. The Enquiry Committee through its Chairman Cum Director-In-Chief Health Services, Bihar, Patna
4. The Director-In-Chief Health Services, Government of Bihar, Patna
5. The Civil Surgeon-Cum-Chief Medical Officer, Saran at Chapra
6. The Incharge Medical Officer Primary Health Centre, Ekma, Distt.- Saran

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Janardan Prasad Singh, Advocate Mr. S.B.K. Mangalam, Advocate
For the Respondent/s	:	Ms. Archana, G.P.-9

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 14-03-2019

In the present case, the petitioner is seeking the following reliefs:-

“(i) For quashing the order dated 09.08.2010 passed by one Man Committee of Mr. Justice Uday Sinha, Chairman of the Committee in case no.13 of 2010 (arising out of L.P.A. No.1642 of 2009) by which the claim of the petitioner has rejected.

(ii) For quashing the order vide letter no.642 (4), dated 4.4.2008 issued under the signature of Director-in-Chief, Health



Services, Bihar, Patna, as contained in Annexure-16 by which the claim of the petitioner for his appointment has been rejected.

(iii) For quashing the report, so far it relates to the petitioner, submitted by the Enquiry Committee set up by the Health Department under the Chairmanship of the Director-in-Chief, Health Services, Bihar, Patna, as contained in Annexure-2, on the basis of the order of this Hon'ble Court dated 26.6.2006, passed in L.P.A. No.946 of 2003 (State of Bihar and Others versus Purendra Solankit) and other analogous cases including L.P.A. No.997 of 2003 (State of Bihar and Others vrs. Dhurandhar Singh), by which regularisation of services of the petitioner from Voluntary Worker to Male Ward Attendant has wrongly and illegally been categorized as illegal, as a result of which the petitioner has been denied the benefit of regularization of his services.

(iv) For commanding the respondents to reinstate the petitioner to his respective post of Male Ward Attendant in the office of Incharge Medical Officer, Primary Health Centre, Ekma, District- Saran and further extend all consequential benefits.

(v) For grant of any other relief or reliefs to



which petitioner is found entitled to.”

2. As per the petitioner, in the year 1982 the post of Male Ward Attendant in the State Dispensary, Ekma (Saran) fell vacant on account of superannuation of one Sri Ram Nath Ram. The Incharge Medical officer, Primary Health Centre, vide letter dated 19.11.1982 made recommendation to the Civil Surgeon-Cum-Chief Medical Officer, Saran to adjust the petitioner against the sanctioned and vacant post of Male Ward Attendant in the Primary Health Centre, Ekma, Saran, and before that the petitioner was working as Voluntary Male Ward Attendant. As per the petitioner, he was regularized on Class-IV post in the pay scale of Rs.350-425/- and accordingly, he joined the post and started discharging the duties to the post of Male Ward Attendant. Later on, he was granted the Junior Selection Grade with effect from 12.05.1994. After enforcement of Pay Revision Commission Report the Finance Department, Government of Bihar, has issued Resolution contained in memo no.660 dated 08.02.1999 and accordingly, the pay scale of the petitioner was enhanced to Rs.2250-3200/-. While he was discharging the duties, he received letter no.147, dated 07.04.2001 issued under the signature of the In-charge Medical Officer, Primary Health Centre, Ekma, (Saran), by which the petitioner was asked to



submit his explanation within a period of one week in the light of Circular issued by the Civil Surgeon-cum-Chief Medical Officer, Saran at Chapra, in the light of letter no.215(4) dated 15.03.2001 of the Health Department, Government of Bihar, and he was asked to hand over the charge to one Sri Kamla Singh, Primary Health Worker, Ekma.

3. The Divisional Commissioner was appointed to inquire into the matter with regard to validity of appointment made in the Health Department in the District of Saran and a list of 130 employees was published in the Hindi daily newspaper, namely, "AAJ" on 07.04.2001 and the name of the petitioner was listed at serial no.119. After that, the petitioner was stopped to discharge the duties and also receipt of payment of salary without giving any opportunity of explanation. The petitioner along with one Gaffar Ansari filed C.W.J.C. No.10681 of 2001, challenged the action of respondents, the same was heard and disposed of by setting aside the direction stopping the payment of the petitioner and restraining to perform the duty, but liberty was given to the respondents to continue with the inquiry proceeding. In pursuance of the order of this Court, the petitioner was allowed to join the post and accordingly, he joined the place of posting. Whereafter, the Civil Surgeon-cum-



Chief Medical Officer, Saran, Chapra, vide letter contained in memo no.4173 dated 05.11.2002 directed the petitioner to submit his explanation regarding validity of his appointment. In compliance of the said direction, the petitioner filed his explanation dated 25.11.2002 through proper channel, but without proper consideration, vide memo no.4430 dated 10.12.2002 terminated the service of the petitioner. Whereafter, the petitioner filed C.W.J.C. No.4304 of 2003, the same was allowed vide judgment and order dated 08.09.2003 and the order of termination was set aside and direction was given for his reinstatement. The said order was challenged before the Division Bench in L.P.A. No.997 of 2003, the Division Bench after placing reliance on the decision rendered in the case of ***State of Karnataka v. Uma Devi (3)*** reported in ***(2006) 4 SCC 1***, disposed of the said L.P.A. and direction was given in terms of paragraph no.44 of the Uma Devi case (supra) to the State authorities to hold an inquiry and regularize the service of the irregular appointees as a one time measure. In pursuance thereof, Five Men Committee was constituted by the State of Bihar, the said Committee found that the services of the petitioner was illegal. Against that action, again the petitioner moved before this Court in C.W.J.C. No.7595 of 2008 and the



learned Single quashed the impugned inquiry report having held to be bad in law and directed for reinstatement of the petitioner. Again the aforesaid order was challenged by the State of Bihar in L.P.A. No.1642 of 2009 and the Division Bench has constituted a One Man Committee, namely, Hon'ble Mr. Justice Uday Sinha Committee and the said Committee has considered the case of the petitioner and found that the appointment of the petitioner is completely illegal and not sustainable in law, thereby affirmed the action of the State vide order dated 09.08.2010. In that order, it has been mentioned that the appointment of the petitioner was not made as per the Rules and Regulations and having held that Voluntary worker does not hold any post and placed reliance on different orders passed by this Court and finally it has been held that the appointment of the petitioner was not made in terms of the Rules and Regulations framed by the State of Bihar, accordingly, the appointment of the petitioner was held to be illegal.

4. Learned counsel for the State has submitted that the petitioner was not appointed in valid manner rather it was an illegal appointment, therefore his services were not regularized, only those persons whose services were found to be irregular, they were regularized in service.



5. The petitioner has not brought on record any material to show that his appointment was in a proper method, but it appears that his entry itself is completely dubious, as no advertisement was published, no selection process has been followed and as such, selection has not been done in a proper manner. Furthermore, the petitioner was engaged as Voluntary Male Ward Attendant, appointed as Male Ward Attendant and thereafter confirmed. It is not a singular case of petitioner, large number of persons in the Health Department have entered into the services through back door method and finally this issue has been settled by the Supreme Court in the case of *State of Bihar and Ors. Vs. Kirti Narayan Prasad* reported in *2019 (1) PLJR 102 (S.C.)*. A person who has entered into service through illegal manner does not have right to continue in service and he should be pushed out in the same manner.

6. In such view of the matter, this Court does not find any merit in this writ petition, accordingly, the same is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
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