

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17566 of 2011

MADAN MOHAN CHOUDHARY Lt. Sundar Lal Choudhary Pindaruch,
P.S. Jantaul, Distt. Darbhanga

... .. Petitioner

Versus

1. THE STATE OF BIHAR
 2. The Commissioner Cum- Secretary Health Department, Govt. Of Bihar
 3. The Enquiry Committee Through Its Chairman Cum Director In Chief ,Health Services, Bihar, Patna
 4. The Director In Chief ,Health Services, Bihar, Patna
 5. The Commissioner ,Darbhanga Division, Darbhanga
 6. The Regional Deputy Director, Health Services, Darbhanga, Division,Darbhang
 7. The Civil Surgeon-Cum-Chief Medical Officer, -Darbhanga
 8. The Incharge Medical Officer, Primary Health Centre, Jale, Distt. Darbhanga
- Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra
For the Respondent/s : Ms.Shail Kumari SC 15

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 08-06-2020 Before coming to the relief, which the petitioner is seeking in the present writ application, the facts asserted in the writ application, which are his basis for such claim, are being taken note of at the very outset.

The petitioner claims that he was appointed as Special Cholera worker in the pay scale of Rs.535-765/- issued under the signature of Civil Surgeon-cum-Chief Medical Officer, Darbhanga. He was allowed junior selection grade with effect from 09.07.1987 and his name figured in the gradation list of Special Cholera Workers prepared and published vide memo no.



593 dated 27.04.1988. The validity of the petitioner's appointment had fallen in controversy, leading to passing of an order dated 27.11.2002, cancelling the petitioner's appointment on the ground that the same was illegal. Before the order dated 27.11.2002 was passed, the petitioner was given an opportunity to explain why his appointment itself be not cancelled, the same being illegal and *void ab initio*. The said order dated 26.11.2002, has been brought on record by way of Annexure 12 of the writ application, from which it transpires that followings were the findings reached by the Civil Surgeon-cum-Chief Medical Officer, Darbhanga:-

(i). There was no procedure followed for appointment namely:-

a) There was no advertisement issued; (b) Reservation Rules were not followed and there was no roster clearance; and (c) No interview or screening was held to objectively assess the suitability of the candidates.

(ii) No records were available in the office relating to the petitioner's appointment.

(iii) The petitioner lacked technical qualification befitting the post against which he was appointed.

(iv) There was no recommendation of any selection



Committee.

(v) The petitioner failed to produce his interview letter, pursuant to which he was appointed.

2. The petitioner had assailed the said order by filing a writ application before this Court with another similarly situated person, which had given rise to C.W.J.C. No. 3397 of 2003. The impugned order was stayed by an order of this Court dated 03.04.2003. It is the petitioner's case that his application was allowed by this Court along with the cases of several other similarly situated petitioners by an order dated 08.09.2013, a copy of which has been brought on record by way of Annexure 14 to the writ application. The operative portion of the order of this Court in C.W.J.C. No. 4702 of 2003 (**Satyendra Kumar Singh v. State of Bihar and others**), which is at Annexure 14, is being re-produced hereinbelow:-

“So far the forged appointments are concerned, the State authorities will be at liberty to identify such cases and take disciplinary action against such persons after holding inquiry and giving an opportunity of being heard to them, but, in no case, their action in terminating such employees without inquiry can be allowed to sustain. In case of Subodh Kumar Prasad v. State of Bihar and others (2003) Patna Law Journal Reports (SC), 187, the apex court has held that obtainment of service on the strength of fake



appointment letters constitutes a case for disciplinary action.

Keeping in view the facts and the legal propositions, as noticed above, in my opinion, the cases of the petitioners of all the categories, enumerated above, should be considered equitably in view of their prolonged continuance in services and, therefore, it would be most appropriate, in the given facts and circumstances of the cases, to invoke equity in favour of the petitioners to save even invalid appointments and the action of the authorities are held to be highly arbitrary, unreasonable and without jurisdiction.

In the result, all theses writ applications are allowed, orders impugned are set aside and the petitioners are directed to be reinstated. However, the petitioners will not be entitled for their salary/remuneration for the period they have not actually worked.

No orders as to costs."

3. The State of Bihar preferred 819 appeals under the Letters Patent of the High Court, assailing the orders passed by the learned single Judge. A Division Bench of the Court disposed of the appeals preferred by the State of Bihar by judgment and order dated 26.06.2006, passed in L.P.A. No. 946 of 2003, (***State of Bihar and others v. Purendra Sulan Kit***) and other analogous cases. The Division Bench noticed that the entry to Class III and Class IV posts in the Health Department during period in question were through backdoor method and in many of the cases, through forged and fabricated letters of appointment or through transfer orders without actual



appointments and in some cases, the appointments were made in the absence of sanctioned post. Some of the appointments were made by the authorities not competent to make such appointments, the Division Bench noticed. The Division Bench while disposing of the appeals made following observations and issued following directions :-

“ All the letters Patent Appeals whether preferred by the State or by affected employees and all the Writ Petitions preferred by the affected employees are hereby disposed of by this common judgment and order with a direction to the authorities of the Health Department, Government of Bihar to reconsider the cases of all the affected employees with a view to find out on the basis of relevant facts and law as settled by the Constitution Bench in the case of Secretary, State of Karnataka v. Uma Devi (supra) as to which of such affected employees are fit for regularization in terms of that judgment, particularly in terms of paragraph 44 of the judgment. Such exercise should be completed within a period of six months from today. If for any good reason, the time period is required to be extended then the respondent State must file an application for that purpose and seek extension from this Court. Till the process is completed, the State of Bihar and its authorities shall maintain status quo in respect of services of the affected employees as existing on date. The status quo shall get revised by the orders that may be passed by the authorities in respect of affected employees as a result of the



exercise to be undertaken by them and their final decision in the light of this judgment and order.

Before parting with this judgment and order, it is considered relevant to observe that recently a writ petition bearing C.W.J.C. No.3349 of 2000 (Yogendra Singh & ors. v. the State of Bihar & ors.) was disposed of by judgment dated 09.05.2006 rendered by one of us, Shiva Kirti Singh, J. in which reliance was placed upon the aforesaid Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka v. Uma Devi for directing the State Government to consider the cases of petitioners of that case for regularization as a one time measure, if their cases meet the requirements laid down in the aforesaid judgment. As observed in that judgment, here also it is clarified that the authorities of Health Department, Government of Bihar while considering the cases of affected employees in these cases, may consider and take decision as per law in respect of similarly situated other employees of the Department, if any, and for that category of similar situated employees, the Department may issue public notice etc. If it is so advised. But they must be conscious of the judgment of the Apex Court, as noticed above, that the exercise of regularization is only a one time measure for the whole Department and no such further exercise will be permissible after the one time measure is resorted to and completed within a reasonable period. Thereafter, the vacancies must be filled up as per requirement of the Department in regular manner as per direction of the Apex Court”.

4. It is the petitioner's case that the Enquiry Committee, constituted under the orders of the Division Bench of this Court, as noted above, conducted an *ex-parte* enquiry and



submitted its report on 31.12.2008 to the State Government, categorizing the petitioner's appointment as illegal appointment. The petitioner questioned the said enquiry report by filing C.W.J.C. No. 5249 of 2008, to the extent the same related to the petitioner. The petitioner's writ application was taken up along with many other analogous cases. A coordinate Bench of this Court by an order dated 06.10.2009, quashed the report of the Enquiry Committee, with a direction to the State of Bihar to reinstate the petitioner and others with effect from the respective dates of their termination with all consequential benefits. The judgment and order of this Court dated 06.10.2009, passed in case of *Om Prakash v. State of Bihar and others* and analogous cases including the case of the petitioner, has been brought on record by way of Annexure 17 to the writ application. The judgment and order passed by the coordinate Bench of this Court on 06.10.2009, in the case of *Om Prakash* (supra) was challenged by filing several appeals under the Letters Patent of this Court by the State of Bihar. A Division Bench of this Court, while hearing such appeals preferred by the State of Bihar, including the appeal preferred against the petitioner, being L.P.A. No. 228 of 2010, ordered for constitution of a one man committee headed by "**Hon'ble Mr. Justice Uday Sinha**" a



retired judge of the High Court, to look into various facts in relation to nature of appointments with a view to adjudicate the legality of their appointments and their continuance in service.

5. In the light of the said order of the Division Bench, the case of the petitioner was considered by the one man Enquiry Committee. The petitioner's claim has been rejected by the one man committee on the grounds, *inter alia*, that he did not possess the technical qualification for appointment on the post of Special Cholera Worker.

6. The said judgment of the one man Enquiry Committee has been put to challenge in the present writ application. It has been noticed by the one man Enquiry Committee that the petitioner's appointment was illegal, having been made in contravention of Articles 14 and 16 of the Constitution of India. It is the petitioner's case that the technical qualification, which, according to the report of the one man Enquiry Committee, the petitioner was not possessing at the time of his initial appointment, was not prescribed for the post of Special Cholera Worker, when he was engaged. It is also the petitioner's case that his appointment, *albeit*, can be said to be irregular, the same cannot be termed as illegal. It is accordingly, his case that the service of the petitioner was wrongly



terminated by the authorities by order dated 27.11.2002. A counter affidavit has been filed on behalf of the State of Bihar, which is there on record.

7. I have heard Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the petitioner and Mr. Vipin Kumar Singh, learned AC to SC-22.

8. What is evident, from the averments made in the writ application, is that appointment of the petitioner was made in complete disregard to the constitutional and legal provisions. There was no notice or advertisement, inviting applications from all eligible candidates. No Vacancy was notified in the employment exchange, no committee was constituted to make selections.

9. The Supreme Court, in a recent decision in case of *State of Bihar and others v. Devendra Sharma and others* reported in **2019 (14) SCALE 178**, after having taken note of illegal, backdoor appointments against various Class III and Class IV posts in the Offices under the Health Department, Government of Bihar, has in no uncertain terms held that as the appointments were made without any sanctioned post, without any advertisement, giving opportunity to all eligible candidates to apply and seek public employment and without any method



of recruitment, such appointments were illegal appointments in terms of the ratio laid down by the Supreme Court in Case of ***Secretary State of Karnataka and others v. Uma Devi*** (3) reported in (2006) 4 SCC 1.

10. Be it noted that in case of ***State of Bihar v. Upendra Narayan Singh and others*** reported in (2009) 5 SCC 65, the Supreme Court has held that Section 4 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, casts a duty on the employer in every establishment, in public sector or in the State or part thereof to notify every vacancy to the Employment Exchange before filling up the same. In view of the final conclusion, recorded by the Supreme Court in case of ***Devendra Sharma*** (supra), in paragraph 44, the petitioner's claim is not tenable at all. Paragraph 44 of the Supreme Court's decision in case of ***Devendra Sharma*** (supra) reads thus:-

*“44. In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of Supreme Court judgment in ***Uma Devi***. As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were backdoor entries, an act of nepotism and favouritism and thus from*



any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process”.

11. It is clear from the Supreme Court’s decision, as noted above, that appointments made without any advertisement and giving opportunity to all eligible candidates to apply and seek public employment has been held to be backdoor entries, which are essentially outcome of nepotism and favouritism, cannot be said to be irregular appointment, by any judicial standards.

12. In view of the above, this application has no merit and is dismissed accordingly.

(Chakradhari Sharan Singh, J)

AKASH/-

U			
---	--	--	--

