

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.535 of 2012
In
Civil Writ Jurisdiction Case No.14379 of 2009

1. The State Of Bihar
2. The Principal Secretary, Health Department Government Of Bihar, New Secretariat, Patna
3. The Regional Deputy Director, Health Services , Tirhut Division Muzaffarpur
4. The Civil Surgeon-Cum-Chief Medical Officer Muzaffarpur
5. The In-Charge Medical Officer, Primary Health Centre Aurai, Distt-Muzaffarpur

... .. Appellant/s

Versus

Dev Narayan Prasad Yadav S/O Sri Raghubansh Narayan Yadav R/O Vill-Jhaua, P.S.-Hathaurhi, Distt-Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, AAG-6
		Mr. Patanjali Rishi, Adv
For the Respondent/s	:	Mr. Shiv Kumar, Adv

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-12-2021

Heard learned counsel for the parties.

This LPA under Clause 10 of Letters Patent Appeal has been preferred for setting aside the judgment and order dated 30.11.2009 in CWJC No. 14379 of 2009 (Dev Narayan Prasad Yadav Vs. State of Bihar & Ors and its analogous cases) passed by learned Single Judge of this Court.

Since the State has seriously challenged the authenticity

of the documents placed on record by the writ petitioner-respondent herein hence disputed question of fact arise which cannot be easily adjudicated in the present petition, as such, as jointly prayed for we are passing the following order:-

The learned Single Judge had disposed of the writ petition vide order dated 30.11.2009 passed in CWJC No. 14379 of 2009 (Dev Narayan Prasad Yadav Vs. State of Bihar & Ors and its analogous cases), which is reproduced hereinbelow:-

“Heard the counsels for the petitioners and the counsel appearing for the state.

Petitioners, in all these writ applications, have prayed for quashing of the report submitted by Five Men Committee instituted by the Department of Health on the direction of High Court in L.P.A. No. 946 of 2003 & analogous cases. Inquiry report has put the appointment of petitioners either in forged or illegal category. Almost all the petitioners have stated that the Inquiry Committee did not afford any opportunity to them to defend their cases, relevant documents were not considered and in violation of rule of natural justice as well as without following the procedure for termination, petitioners have been terminated from their services on the basis of the Inquiry report.

The issue has already been decided by this court in the similar matter in C.W.J.C. No. 6575/09 & analogous cases where the Inquiry Report of Five Men Committee has been quashed.

Accordingly, in these writ applications also, the inquiry report relating to these petitioners whereby they have been either put in the category of illegal or forged appointees is quashed. The impugned termination orders issued against the petitioners in their respective cases are also quashed.

These writ applications are allowed. The respondents are directed to reinstate the petitioners where they were earlier working, with all consequential benefits.”

Against the order passed by learned Single Judge State of Bihar had preferred this appeal in which on 25.06.2012 and 10.11.2020 following orders were passed:-

“25.06.2012

Re. Interlocutory Application No. 2675 of 2012.

The delay of 352 days occurred in filing the Letters Patent Appeal is condoned on condition that the appellant State of Bihar pays costs of Rs. 1000/- (One thousand) to the respondent writ petitioner. The amount of costs will be paid within three weeks from today.

Interlocutory Application stands disposed of.

Re. Letters Patent Appeal No. 535 of 2012.

Admit.

To be heard with LPA No. 1414 of 2011.

Re. Interlocutory Application No. 2676 of 2012.

Pending the Appeal, there shall be ad interim stay of the operation of the impugned judgment and order dated 30th November 2009 passed by the learned single Judge insofar as CWJC No. 14379 of 2009 is allowed.

Interlocutory Application stands disposed of.

10.11.2020

Shri Shiv Kumar, who appears on behalf of the respondent herein/original writ-petitioner, prays for an adjournment.

On behalf of the State, it is pointed out that the matter in issue is squarely covered vide judgment dated 17th of October, 2019 passed by Hon’ble the Apex Court in Civil Appeal No. 7879 of 2019 arising out of S.L.P. (Civil) No. 11885 of 2012 titled as State of Bihar Vs. Devendra Sharma.

To enable the learned counsel for the writ-petitioner to complete his instructions as also peruse the aforesaid judgment, matter is adjourned.

List in the category of ‘Order Matters’ on 26th of November, 2020.”

It is not in dispute before us that the issue with regard to the appointments, whether illegal or irregular now stands settled vide judgment of Hon’ble the Apex Court in the case of **State**

of Bihar and Ors. vs. Devendra Sharma since reported in **(2020) 15 SCC 466.**

The writ petitioner/respondent case is now to be factually verified in view of the principles enunciated in the said decision.

In this view of the matter, as jointly prayed for, we dispose of the present appeal with a direction to the appellant authority to consider the case of the writ petitioner/respondent herein in the light of the ratio laid down in **Devendra Sharma (supra).**

Writ petitioner/respondent herein shall approach the appellant authority within a period of four weeks for which period status quo as on date shall be maintained, failing which there shall be automatic vacation of the order, with all consequences to follow.

However, as and when any such request is received, the same shall be considered and decided in accordance with law within a period of two months thereafter. The authority shall pass an order accounting for all the attending facts and circumstances of the present case, including the law laid down by the Hon'ble Apex Court in **Devendra Sharma (supra).** Whether the writ petitioner/respondent's appointment is illegal

or irregular would be examined with all resultant consequences.

Copy of the order assigning reason shall be supplied to the writ petitioner/respondent herein .

Liberty reserved to writ petitioner/respondent herein to approach the court, should the need so arise subsequently, on the same and subsequent cause of action.

The appeal stands disposed of with aforesaid observation and direction.

Interlocutory application (s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-sanjay

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	