

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.935 of 2012
In
Civil Writ Jurisdiction Case No.5776 of 2008

1. THE STATE OF BIHAR through the Principal Secretary-cum-Commissioner, Department Of Health And Family Welfare, Govt. Of Bihar, Patna
2. The Director-In-Chief Health Services, Govt. Of Bihar, Patna
3. The Deputy Director Health Services, Govt. Of Bihar, Patna
4. The Regional Deputy Director, Health Services, Gaya Division, Gaya
5. The Civil Surgeon Cum Chief Medical Officer, Aurangabad
6. The Civil Surgeon Cum Chief Medical Officer, Jehanabad
7. The Additional Chief Medical Officer, Aurangabad
8. The Incharge Medical Officer Primary Health Centre, Haspura, District-Aurangabad

... .. Appellant/s

Versus

MITHILESH KUMAR SINHA S/O Late Sukhdeo Singh R/O Village-Sarmastpur, P.S.- Karpi, In The District Of Arwal

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, AAG-6 Mr. Patanjali Rishi, Adv
For the Respondent/s	:	Ms. Manisha Singh, 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

06.10.2009 in CWJC No. 5776 of 2008 (Mithilesh Kumar Singh Versus The 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 06.10.2009 passed in CWJC No. 5776 of 2008 (Mithilesh Kumar Singh Versus The State Of Bihar & Ors and its analogous cases).

Against the order passed by learned Single Judge State of Bihar had preferred this appeal in which on 19.09.2014 and 10.11.2020 following orders were passed:-

“19.09.2014

Though served, the respondent has not entered appearance.

I A No. 4244 of 2012

The delay of 804 days occurred in preferring the Letters Patent Appeal is condoned.

Interlocutory Application stands disposed of.

Letters Patent Appeal No. 935 of 2012

Admit.

To be heard with Letters Patent Appeal No. 375 of 2012. Notice of admission and stay will be sent

to the respondent.

I A No. 4245 of 2012

Pending the Appeal, there shall be interim stay against the operation and execution of the impugned judgment and order dated 6th October 2009 in so far as it relates to CWJC No. 5776 of 2008.

Interlocutory Application stands disposed of.

10.11.2020

“Ms. Manisha Singh, 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	NAFR
CAV DATE	NA
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Transmission Date	NA