

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.8 of 2014
In
Civil Writ Jurisdiction Case No.11806 of 2009

1. The State Of Bihar
2. The Principal Secretary, Health Department, Bihar, Patna
3. Director In Chief, Health Services, Bihar, Patna
4. Civil Surgeon Cum Chief Medical Officer, Madhubani
5. Incharge Medical Officer, Primary Health Centre, Pandaul, Madhubani

... .. Appellant/s

Versus

Binay Kumar Jha Son Of Bashistha Narayan Jha Resident Of Village -
Baragan, Police Station - Pandaul, District - Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, AAG-6
		Mr. Patanjali Rishi, Adv
For the Respondent/s	:	Mr. Prafful Chandra Jha, 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 12.11.2009 in CWJC No. 11806 of 2009 (Binay Kumar Jha Vs. State of Bihar & Ors) 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 12.11.2009 passed in CWJC No. 11806 of 2009 (Binay Kumar Jha Vs. State of Bihar & Ors), which is reproduced hereinbelow:-

“Heard Counsel for the petitioner and the counsel appearing for the State.

Petitioner has prayed for quashing the order dated 9.9.2008 prepared by the High Level Committee constituted in the light of the direction by the High Court in LPA No. 946 of 2003 (The State of Bihar and others Vs. Purendra Sulan Kit and others). The High Level Committee scrutinized the cases of several Class III and Class IV employees working in the Health Department and terminated from their service on the ground that they were not validly appointed. In its report the Committee has fixed the services of the petitioner in the illegal category.

Petitioner's case is that the Committee for scrutinizing the validity of appointment of different employees fixed guidelines for putting him in illegal, forged and irregular category. In the case of the petitioner standard, fixed by the Committee has been ignored. The Committee had decided that employees who fulfilled four criterions will be put in irregular category. Petitioner's case is that those four criterions related to appointment sanctioned post, having requisite qualification, appointment by the competent authority and continuation on the post for more than ten years without any intervention of the Court's order. Petitioner fulfilled all four criterions, and thus was entitled for being put in the irregular category. Ignoring all these, he was put in illegal category.

It is also submitted by the petitioner's counsel that his case is fully covered by the recent judgment of this Court in CWJC No. 6575 of 2009 and analogous cases, wherein the cases of similarly situated employees of the Health Department have been decided and the

inquiry report quashed considering it on different grounds.

I find that for the reasons stated above and also that the case of petitioner was fully covered by the judgment of this Court passed in CWJC No. 6575 of 2009 and analogous cases, the inquiry report submitted against the petitioner is quashed. Petitioner's case as per the guidelines of the inquiry report itself should have been put in irregular category, in that case, there is specific direction for his reinstatement on the post. The respondents are directed to reinstate the petitioner on the post with consequent benefits.

With the aforesaid directions and observations, the writ application stands disposed of."

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

"10.11.2020

Learned counsel, 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 writpetitioner to complete his instructions as also peruse the aforesaid judgment, matter is adjourned. List in the category of 'Order Matters' on 7 th of December, 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	
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