

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1127 of 2012

In
Civil Writ Jurisdiction Case No.14189 of 2009

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Dilip Kumar Mishra S/O Shri Shyam Narayan Mishra Resident Of Village
Majhauria, Police Station Ashok Paper Mill Rameshwar Nagar, District
Darbhanga.

... .. Appellant/s

Versus

1. The State Of Bihar through Shri Dipak Kumar, Secretary, Department of
Health Bihar, Patna.
2. Shri Jeevan Kumar Singh, Regional Development Officer, Darbhanga
Commissionary, Darbhanga.
3. Dr. Sabbir Ahmad, The Then Civil Surgeon Cum Chief Medical Officer,
Madhubani.
4. Dr. Chandramani Mishra, In Charge Medical Officer, Primary Health Centre,
Pandaal, District Madhuba

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kripa Nand Jha, Adv

For the Respondent/s : Mr.Prahlad Kr. Bhagat, Adv

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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
16.12.2010 in CWJC No. 14189 of 2009 (Dilip Kumar Mishra
Vs. The 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-

appellant herein, hence disputed questions 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 dismissed the writ petition of appellant vide order dated 16.12.2010 passed in CWJC No. 14189 of 2009 (Dilip Kumar Mishra Vs. The State of Bihar & Ors), which is reproduced hereinbelow:-

“In absence of any material which has been annexed or brought on record which would demolish the findings given by the Principal Secretary in his speaking order contained in Annexure-1, there is no reason for this Court to investigate the matter or reopen the matter second time over.

The case of the petitioner was considered in the light of the earlier direction of the Court and there is categorical finding by the committee that the appointment of the petitioner was illegal. If that be so, then neither the original termination order, is required to be interfered with nor the speaking order contained in Annexure-1.

This writ application has no merit and is dismissed.”

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

“None appears on behalf of the writ-petitioner. 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.

As none has appeared, list in the category of '

Order Matters' on 27th 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/appellant’s 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 respondent authority to consider the case of the writ petitioner/appellant in the light of the ratio laid down in **Devendra Sharma (supra)**.

Appellant shall approach the respondent 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/appellant’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/appellant.

Liberty reserved to writ petitioner/appellant 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	