

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1888 of 2011**

**In**  
**Civil Writ Jurisdiction Case No.1379 of 2010**

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1. THE STATE OF BIHAR through the Director-in-Chief, Health Services, Bihar, Patna
  2. The Chief Malaria Officer, Bihar, Patna
  3. The In-Charge, District Malaria Officer, Bettiah, East Champaran

... Respondents ... Appellant/s

Versus

BABU LAL SAH Son Of Yadu Nandan Sah Posted As Labour Field Worker  
Class - Iv In The Office Of In-Charge District Malaria Officer, Bettiah,  
Resident Of Village - Bhagarwa, Ps - Manjholia, District West Champaran

... Petitioner ... Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr.Bajarangi Lal AC to GA7     |
| For the Respondent/s | : | Mr.Ajoy Kumar Chakraborty, 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 09.11.2010 in CWJC No. 1379 of 2010 (Babu Lal Sah Vs the State of Bihar & Ors and its analogous case) 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 **09.11.2010** passed in **CWJC No. 1379 of 2010 (Babu Lal Sah Vs the State of Bihar & Ors and its analogous case)**, which is reproduced hereinbelow:-

“Petitioners are the persons, whose services were dispensed with on the ground of irregularity in appointment. They along with several hundred approached this Court. The matter then traveled to the Division Bench. While the matter was pending before the Division Bench in LPA, the Division Bench directed the State to scrutinize the cases of all individuals, who were affected by the order of termination of their services and categorize them basically in two categories i.e. irregular appointment and illegal appointment. A High Powered Committee headed by the Director-in Chief, Health Services, was formed. It submitted its report to the Court on affidavit. In the said report, the Committee categorized the petitioners as irregular appointees. By virtue of the said placement, the petitioners became entitled to be regularized. Ultimately, all L.P.As were disposed of, which judgment is since reported as State of Bihar –v- Purendra Sulan Kit, 2006(3) PLJR 386. By then the judgment of Constitution Bench of Apex Court in the case of Secretary, State of Karnataka-v- Uma Devi since reported in 2006(2)PLJR (SC) 363 was at hand. This Court disposed of LPAs as per the judgment, as referred to above, and directed the State to set up a Committee and scrutinize the individual cases. In so far as persons, who are found to be irregular appointees, they should be regularized and the rests would be deemed to be dismissed being illegal appointees. This time when the Committee remained under a new Director-in Chief, Health Services, it found the petitioners to be illegal appointees as against irregular in the earlier report. It is this brought the petitioners to this Court seeking the reliefs as this adversely affects the petitioners. At first, a counter

affidavit was sought to be filed by the State taking the very existence of the first report but on being shown that it was a part of the record of LPA proceeding and filed under affidavit duly sworn by Director-in-Chief, Health Services, the said affidavit was withdrawn.

A second counter affidavit was then filed. It was then submitted that as the first report did not bear the signature of all the members of the Committee though it was filed under affidavit of the Director-in-Chief, Health Services, it was not acted upon and as such after retirement of the Director-in-Chief, Health Services under the new Director-in Chief, Health Services, a fresh Committee was formed. This submission is again not correct. The sound reason for the second Committee is that the first Committee was formed pursuant to interim order in LPA proceeding. That report was not finally affirmed or acted upon by this Court. While disposing of LPAs, this Court passed a fresh direction to constitute a fresh Committee to examine the matter and that is how the second Committee came into being after disposal of LPAs. However, question remains as to why irregular appointees suddenly became illegal appointees.

Here, I may notice that the petitioners were engaged purely as daily wagers by the Incharge District Malaria Officer . They have been working continuously for four years and applied for regularization. The District Malaria Officer forwarded their applications to the Chief Malaria Officer, Bihar, Patna . The Chief Malaria Officer, Bihar, Patna then passed an order approving their regularization and directed the District Malaria Officer to follow up the formality. It is pursuant to that the petitioners were then regularized way back in the year 1988 itself. It is now said in the counter affidavit that initial appointment being by an officer, who was not competent, being illegal. The petitioners are now categorized as illegal though in the first report they were shown as irregular because of the categorization that was followed was that an appointee by incompetent person having qualification on vacant sanctioned post was to be treated irregular. This difference changed the situation. From the facts, it would be clear that it is not in dispute that the petitioners were engaged on daily wage on sanctioned vacant posts, who were qualified for permanent appointment to that post. It was mere in charge on daily wages not an appointment to the post.

On State's own showing the persons, who could make these appointments was the Chief Medical Officer, Bihar, Patna. From the facts, noted above, it would be seen that being daily wagers for over four years their cases were referred to the Chief Medical Officer, who granted approval for their regularization. Thus appointments were to be made upon regularization by the Chief Medical Officer, Bihar, Patna who on State's own stand was the competent officer. Thus, on the facts, it is not in dispute that these appointments /regularizations were made by the Chief Medical Officer, Bihar, Patna, who was the competent person to appoint on duly sanctioned post, which was vacant and for which the petitioners had requisite qualification. That, in my view, would make it only irregular appointment and cannot be termed as illegal appointment. To that extent, Five Men Committee report cannot be sustained. Here, I may notice another aspect from the very judgment of the Constitution Bench, which is the basis of the judgment of this Court in LPA cases, where their Lordships in LPA cases have noticed para 44 of Uma Devi case. In that para itself their Lordships have noted as under-

“We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment”

In the present case, petitioners' appointments were duly regularized pursuant to order passed by the competent authority on sectioned vacant posts. It is not the case of the State that the Chief Medical Officer, Bihar, Patna was not the competent to order regularization. Thus, in my view, petitioners have been wrongly categorized as illegal appointees. They were rightly shown as irregular appointees in the first report, as submitted to the Court, the consequence whereof would be that being irregular appointees, in view of the judgment of this Court in which petitioners were also parties, they would be required to be regularized and/or not interfered with and having been dismissed, would be liable to be taken back as others have been.

With the aforesaid observations and directions, the writ petitions stand disposed of.”

Against the order passed by learned Single Judge, State

of Bihar had preferred this appeal in which on 19.01.2012 and 10.11.2020, following orders were passed:-

**“19.01.2012**

**Re. Interlocutory application No. 8449 of 2011:**

This application under Section 5 of the Limitation Act is filed by the appellant- State of Bihar and others for condonation of delay of 341 days occurred in filing the Letters Patent Appeal.

On the facts and in the circumstances of the case, the delay is condoned on condition that the appellant-State of Bihar, within four weeks from today, pays a cost of Rs. 500/- to the respondent-writ petitioner.

Interlocutory application stands disposed of in the above term.

**Re. Letters Patent Appeal No. 1888 of 2011:**

Admit.

To be heard with L.P.A. No. 1872 of 2011.

**Re. Interlocutory application No. 8450 of 2011:**

Pending the appeal, there shall be interim stay in terms of prayer paragraph-5.

Interlocutory application stands disposed of.

**10.11.2020**

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/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)**

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