

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.941 of 2014
In
Civil Writ Jurisdiction Case No.9636 of 2009

1. The State Of Bihar through the Secretary cum Commissioner, Health Department, New Secretariat, Patna.
2. Director in Chief, Health Services, Health Department, New Secretariat, Patna.
3. Deputy Director, Health Services Training, Bihar, Patna.
4. Civil Surgeon-cum-Chief Medical Officer, Madhubani.
5. In-charge Medical Officer, Primary Health Centre, Madhepur, Madhubani.

... .. Appellant/s

Versus

Malti Kumari No. 1 Or a @ Malti Kumari D/o Mr. Chintamani Mahto, W/o Sri Awadhesh Prasad Resident of Village Srichandpur, Post Office and Police Station Harnaut, District Nalanda. Lastely posted on the Post of A.N.M. at Prathmic Swasthya Kendra, Madhepur Madhubani.

... .. Respondent/s

Appearance :

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

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. 9636 of 2009(Malti Kumari No. 1 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 12.11.2009 in CWJC No. 9636 of 2009(Malti Kumari No. 1 Vs. state of Bihar & Ors and its analogous cases) which is reproduced hereinbelow:-

“Heard counsels representing the petitioners and counsels appearing for the State.

Petitioners in all these writ applications have challenged the enquiry report submitted by the Five Men Committee constituted by the State Govt. in the light of order passed in L.P.A. No. 946 of 2003. Petitioners in almost all the cases were appointed in 1980, 1990 and thereafter. Almost all the petitioners have remained in service for more than 10 years. They have also challenged their termination order as well as enquiry reports on the similar ground as has been challenged by the petitioners in C.W.J.C. No. 6575 of 2009 and analogous cases.

Petitioners have stated that without issuing any notice, enquiry was conducted. Appointments of petitioners were considered illegal or forged, but similar treatments were not given to the employees, who were appointed in same transaction and should have been put in the same category. Persons who were put under irregular category, were reinstated, but some of the persons, who were entitled for being put in the same category, have been put in illegal appointees category, or in the forged category. Considering the grounds taken by petitioners’ for challenging the enquiry report and termination order, it is obvious that finding recorded by this Court in C.W.J.C. No. 6575 of 2009 and analogous cases, is applicable in their cases. Enquiry report in these petitioners’ case also has been submitted without conducting the enquiry in proper manner as per direction

of High Court in L.P.A. No. 946 of 2003.

Considering the fact that almost all these cases are similar to those writ applications, already decided earlier in C.W.J.C. No. 6575 of 2009 and analogous cases, petitioners in these writ applications are also entitled for same relief. The findings recorded in C.W.J.C. No. 6575 of 2009 and analogous cases will have application in the cases of present petitioners, whose matters are being disposed of by the common order. Accordingly, the enquiry report submitted by Five Men Committee in favour of the petitioners is quashed. Their termination orders are also quashed. The respondents authorities are directed to reinstate the petitioners on the post they have working. Their reinstatement will be with effect from the date of their appointments with all consequential benefits.

All these writ applications are allowed.”

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

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)

ranjan/-sanjay

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	