

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.364 of 2014

In
Civil Writ Jurisdiction Case No.16924 of 2009

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1. The State Of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
 2. The Director In Chief, Health Services, Government Of Bihar Patna.
 3. The Civil Surgeon-Cum-Chief Medical Officer, Supaul.
 4. The Incharge, Medical Officer, Primary Health Centre, Basantpur Birpur Supaul.

... .. Appellant/s

Versus

Soman Bhagat Son Of Late Awadh Bhagat Resident Of Village - Sapha, P.S.-
Saur Bazar, District - Saharsa.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, AAG-6
		Mr. Patanjali Rishi, Adv
For the Respondent/s	:	Mr. Shiv Kumar, 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 13.09.2011 in CWJC No. 16924 of 2009 (Soman Bhagat 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 13.09.2011 passed in CWJC No. 16924 of 2009 (Soman Bhagat Vs. state of Bihar & Ors and its analogous cases, which is reproduced hereinbelow:-

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

Pursuant to an advertisement, petitioner has applied for his appointment to the post of Male Family Welfare Worker. Following the procedure prescribed under law, he was selected for the post. The Civil Surgeon-cum-Chief Medical Officer, Ranchi issued an appointment letter vide memo no. 88 dated 15.1.1981. Petitioner was directed to join on the post before the In-charge Medical Officer, Primary Health Centre, Patkot, Ranchi and accordingly he joined on the post on 18.1.1981. Petitioner's case is that he started working against the sanctioned vacant post. Subsequently vide memo No. 3330 dated 27.12.1990 his services alongwith several other persons was confirmed. He was transferred to Saharsa. While working at his transferred place query was made by the Civil Surgeon-cumChief Medical Officer, Saharsa regarding genuineness and legality of his appointment. Payment of salary was also stopped. However on proper verification petitioner's appointment was found to be legal and the appointment genuine by the Civil Surgeon-cum-Chief Medical Officer, Saharsa. Letter No. 150 dated 15.6.1993 was issued under the signature of Civil Surgeoncum-Chief Medical Officer, Saharsa directing the In-charge Medical Officer, Basantpur to start payment of petitioner's salary, since it had been withheld during the enquiry. Petitioner was given first time bound promotion after completion of ten years of service. He also appeared in Hindi Noting and Drafting examination in the year 1997 and declared passed.

In the year 1997 again an inquiry was conducted regarding the legality and genuineness of

petitioner's appointment, and he was directed to submit his certificate of educational and training certificate, residential certificate and transfer order for verification. All these documents were submitted in the office of In-charge Medical Officer, Basantpur Block and after proper verification appointment was found to be legal and appointment letter genuine. After this enquiry payment of salary resumed which was earlier stopped. Petitioner, subsequently vide order contained in memo no. 514 dated 30.4.2003 issued by the Civil Surgeon-cum Chief Medical Officer, Supaul was terminated from his service, on the ground that his appointment was illegal on the basis of a forged appointment letter. This order was challenged by the petitioner in CWJC No. 5707 of 2003, which was allowed with a direction to reinstate the petitioner in service. The direction of the High Court was not implemented by the respondent on the ground that State has preferred LPA against the order passed in the writ application. Order passed in favour of the petitioner was heard analogous with LPA No. 946 of 2003 and disposed off with a direction to the State Government to constitute five men Committee for conducting an inquiry and examine the nature and status of appointments of affected persons. The inquiry was to be conducted for the purposes of regularization in the light of the judgment of the Supreme Court in the case of State of Karnataka vs. Uma Devi. The LPA court had directed to constitute five men committee to examine the individual cases of writ petitioner and to submit report within a period of six months. Petitioner's case is that the five men committee did not conduct any inquiry so far his appointment is concerned. He was not issued any notice to appear before the Committee. No notice was issued to the appointing authority in order to find out whether appointment letter had been issued under his signature. Connected records were not called for to examine the correctness of allegation regarding forged appointment letter. Simply on presumption the Five Men Committee recorded a finding that petitioner's appointment letter was forged and appointment illegal.

Counsel for the petitioner submits that in similar matter the Division Bench in LPA No. 230 of 2011 and analogous LPA has quashed the inquiry report submitted by the Five Men Committee and has recorded a finding that the Five Men Committee report in absence

of signature of two of its member cannot be considered a legal report, to be acted upon. The Division Bench has also held that without issuing any notice giving opportunity to the concerned persons, if any, report has been submitted, that is violative of rule of natural justice. On the basis of such report employee, working against the sanctioned post, continuously for more than a decade, cannot be terminated from the service. Regarding forged appointment letter the finding of the Division Bench is that an employee is not supposed to know whether any entry has been made in the dispatch register, while issuing his appointment letter. If there is no entry in the dispatch register, this is for the employer to answer and for that the employee cannot be held to be working on the basis of a forged appointment letter.

I find that all these findings, recorded by the Division Bench in LPA No. 230 of 2011 and analogous LPA are fully applicable in the case of the petitioner. The ground on which the Five Men Committee report was quashed by the Division Bench is fully applicable in the case of the petitioner.

For all these reasons, the inquiry report of Five Men Committee contained in Annexure-11 relating to the petitioner, is quashed with a direction to the respondents to reinstate the petitioner on his post with all consequential benefits.

The writ application is 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

Shri Shiv Kumar, 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	
CAV DATE	
Uploading Date	
Transmission Date	