

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.223 of 2014
In
Civil Writ Jurisdiction Case No.16039 of 2009

1. The State Of Bihar through Secretary, Health and Family Welfare, Government of Bihar, New Secretariat, Baily Road, Patna
2. Director In Chief, Health Services, Government Of Bihar, Patna
3. Special Secretary, Health Department, Bihar, Patna
4. Deputy Secretary, Health Department, Bihar, Patna
5. Deputy Director, Health Services, Bihar, Patna

... .. Appellant/s

Versus

Rajesh Kumar Mallick Son Of Sri Deewakar Mallick, Resident Of Village-
Devhar, P.O. Devhar, Via Babu Barhi, District- Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, AAG-6
		Mr. Patanjali Rishi, Adv
For the Respondent/s	:	Mr.Prafull 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 18.12.2009 in CWJC No. 16039 of 2009 (Rajesh Kumar Mallick 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 18.12.2009 passed in CWJC No. 16039 of 2009 (Rajesh Kumar Mallick Vs. State of Bihar & Ors and its analogous cases), which is reproduced hereinbelow:-

“Petitioners in all these writ applications are Class-III and Class-IV terminated employees of Health Department, except, petitioners in C.W.J.C. No. 3901 of 2008 and C.W.J.C. No. 15396 of 2009.

Prayer of petitioners in all these writ applications is for quashing of the report submitted by Five Men Committee, whereunder their appointments have been put either in illegal or forged category.

Prayer of the petitioners is also for a direction to quash consequential orders, issued by the respective authorities in their cases as well as for a direction to the respondents to re-instate them with all consequential benefits.

Counsels for the petitioners have been submitted that none of these petitioners are appointees of Dr. A.K. Mallick and, as such, their cases are identical to the case of those petitioners, whose cases have been decided by this Court in C.W.J.C. No. 6575 of 2009 and analogous cases.

The counsels have also submitted that similar grounds have been taken by all these petitioners in their writ applications for quashing of the enquiry report as well as the termination orders, as such findings recorded in C.W.J.C. No. 6575 of 2009 and analogous cases, are equally applicable in their cases.

Petitioners in all these cases were also appointed in between 1980-1986 or later on. They have continued in their service uninterruptedly for ten years or more, they were treated as regular employees by opening of their service books, increments, enhancement of pay scale, etc. Their appointments have been put in the forged and illegal category, without giving them any opportunity to defend their cases, without properly looking into the connected records of their appointments and without holding proper enquiry. The Enquiry Committee has recorded finding in their cases completely overlooking the direction of High Court in L.P.A. No. 946 of 2003 and analogous cases. Accordingly, the enquiry report relating to these petitioners, and their respective consequential respective termination orders, are fit to be quashed.

Prayer of the petitioners is allowed. Enquiry report relating to the petitioners and termination orders are quashed. Respondents are directed to re-instate the petitioners on their respective posts with effect from the date, they have been terminated, with all consequential benefits.

C.W.J.C. No. 3901 of 2008 was filed by one Ram Swarath Sahu. He was class-III employees. During the pendency of the writ application, he died.

I.A. No. 5489 of 2009 was filed by Smt. Gayatri Devi, widow of original petitioner, Ram Swarath Sahu, for substituting her name in place of the original petitioner, Ram Swarath Sahu.

I.A. No. 5489 2009 was allowed and the name of Gayatri Devi was substituted in place of original petitioner.

In the given facts and circumstances of the case, the substituted petitioner, Gayatri Devi is entitled for the monetary benefits, payable to her late husband, family

pension and other pensionary benefits. She can also apply for her compassionate appointment being the widow a government employee.

Petitioner in C.W.J.C. No. 15396 of 2009 is Lukhiya Devi.

Late Ram Chandra Mahto husband of Lukhiya Devi had earlier filed C.W.J.C. No. 1262 of 2003 (Sitaram Mishra & Others Vs. The State of Bihar and Others) for his arrears/current salary, which was disposed of by order dated 24.02.2003.

The Civil Surgeon-cum Chief Medical Officer, Madhubani vide letter contained in Memo No. 882 Madhubani dated 27.03.2003 terminated petitioner's husband and C.W.J.C. No. 7302 of 2003 was filed, challenging the order. This writ application was disposed of by a common order dated 26.06.2006 passed by the Division Bench in L.P.A. No. 946 of 2003 and analogous cases, with a direction to the State Government to consider the case of each petitioner within a period of six months, after scrutinizing the case of each petitioner. Finally, the committee constituted in the light of the direction of the High Court, scrutinize several cases but 245 cases were kept pending. The pending 245 cases were again scrutinized by Four Men Committee. But, so far the case of the husband of the petitioner is concerned, was not scrutinized though, the validity of his appointment undecided but, it has been thrown in the forged category.

The petitioner's late husband worked for more than 16 years continuously without any break in service, his service book was opened and he was regularized on the post. He could not have been terminated simply on the basis of a show cause notice, without initiating any departmental proceeding, in this regard, which is essential in case of permanent/regular staff of the Health

Department, Government of Bihar.

The direction and order passed by this Court in C.W.J.C. No. 6575 of 2009 and analogous cases is fully applicable in case of petitioners Lukhiya Devi and Gayatri Devi. The petitioners are entitled for all monetary benefits including the pensionary benefits and family pension as well as compassionate appointment.

All these writ applications are allowed in the light of the judgment/order passed in C.W.J.C. No. 6575 of 2009.”

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	
CAV DATE	
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