

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17631 of 2009**

=====

Birendra Kumar Choudhary S/O Late Raj Kishore Choudhary R/O Vill.-  
Karaj, P.S.- Kamtaul, Distt.- Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Deptt. Of Health, Govt. Of Bihar, Patna
3. The Director-In-Chief, Health Services, Govt. Of Bihar, Patna
4. The Regional Deputy Director, Health Services, Darbhanga Division,  
Darbhanga
5. The Civil Surgeon-Cum-Chief Medical Officer, Madhubani, Bihar
6. The Incharge Medical Officer, Primary Health Centre, Ghoghardiha, P.S.  
Ghoghardiha, Distt.- Madhuba

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                                                  |
|----------------------|---|------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Avinash Kumar Singh, Advocate<br>Mr. Ambar Narayan, Advocate |
| For the Respondent/s | : | Mr. Shiv Kumar, AC to GA 3                                       |

=====

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**ORAL JUDGMENT**

**Date : 11-10-2022**

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i) For setting aside the order of termination contained in Memo No. 2493, Madhubani, dated 30.10.2001 (Annexure – 5) whereby and whereunder the services of the petitioner has been terminated after continuous service of about 13 years on the post of Basic Health Worker.



ii) For commanding the respondents to reinstate the petitioner on the post he was last working with effect from the date of his termination with all consequential benefits.

iii) For any other relief or reliefs to which the petitioner is entitled in law.”

3. In para No. 21, petitioner has pleaded as under:

“21. That the petitioner being similarly situated also filed a writ application before this Hon'ble High Court being CWJC No. 10041 of 2003. His case as well as several other cases were heard analogous with L.P.A. No. 946 of 2003. The division bench of the Hon'ble Chief Justice and Justice Shiva Kirti Singh vide order dated 26.06.2006 disposed of the matters without deciding the merit of the case, directing the State to decide the cases of the terminated employees including the petitioner in the light of the judgment of the Constitution bench of Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi and others. Direction was to find out which of the cases came in the category of irregular appointments. In case of irregular appointment steps be taken to regularize services of such irregularly appointed employees as a one-time measure and so far the cases coming in the category of illegal and forged, no steps were to be taken for their continuation in service. The direction was that in case of regularly appointed employees having worked for ten years and more against a duly sanctioned post, without covers of orders of courts or tribunal,



their services be regularized initiating a process for regularization within six months from the date of judgment.

Further direction was to constitute a committee for holding inquiry.”

4. The petitioner has already questioned the validity of the order dated 30<sup>th</sup> October, 2001 (Annexure – 5) in earlier litigation. Core issue involved in the present litigation is whether petitioner is entitled to continue in service or not?

5. Learned counsel for the State, on instruction, submitted that there were large scale scam in appointment in the Public Health Department resulted in number of litigations. This Court in L.P.A. No. 946 of 2003, a general direction has been given to constitute a committee and examine relevant records of the concerned person who has been appointed and seeking regularization. The committee is stated to have submitted report and it is adverse to the petitioner to the extent that alleged documents were stated to be a fake. After taking note of the committee report, the concerned respondent is stated to have issued a communication to the petitioner in the year 2008 stating that petitioner’s initial appointment was not in accordance with law and it is learnt that he has submitted a fake document in obtaining appointment order. However, such a decision is not



supported by show cause notice. In identical matter in C.W.J.C. No. 17632 of 2009 on 09.12.2021 following order was passed:

“Heard learned counsels for the respective parties.

2. In these two writ petitions, the petitioners stated to have been appointed on Ad-hoc basis and their services have been terminated, which was subject matter of the litigation before this Court.

3. In a bunch of petitions, this Court decided on 26.06.2006, in which the petitioners' name were reflected at serial Nos. 330 and 445 respectively.

4. Before passing impugned order at Annexure-5, the petitioners have not been provided opportunity of hearing as to whether they are entitled to continue in the post followed by regularization in terms of the LPA decision dated 26.06.2006. Therefore, the impugned orders dated 26.06.2001 and 24.05.2001 at Annexure-5 in both the petitions stand set aside, so far as petitioners are concerned.

5. The concerned respondent is hereby directed to issue a detailed show-cause notice as to why their services cannot be terminated and so also they are not entitled for their regularization.

6. On receipt of a detailed show-cause notice, the petitioners are hereby directed to submit their explanations within two months from the date of receipt of show-cause notice. On receipt of petitioners explanation to the show-cause notice to be submitted, the competent authority is hereby



directed to pass speaking order on due consideration of the contentions to be raised by the petitioners in the reply to the show-cause notice

7. The above exercise shall be completed within a period of four months from the date of receipt of this order.

8. Both the petitions stand disposed of.”

6. Therefore, the concerned respondent is hereby directed to take note of the aforesaid direction in the present case also and proceed to issue detailed show cause notice and on receipt of petitioner’s explanation a detailed speaking order shall be passed and communicated to the petitioner as to how the petitioner is not entitled to appointment. The above exercise shall be completed within a period of six months.

7. With the above observation, the present petition stands disposed off.

**(P. B. Bajanthri, J)**

GAURAV S./-

|                   |            |
|-------------------|------------|
| AFR/NAFR          |            |
| CAV DATE          |            |
| Uploading Date    | 14.10.2022 |
| Transmission Date |            |

