

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17382 of 2019

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Fuldev Yadav, Son of Dukhi Yadav, Resident of Ward No.6, Mujiyasi Parsa,
Parsa Ghoghardiha, District- Madhubani, Bihar- 847402.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna.
3. The Director-in-Chief (Disease Control), Directorate, Health Services, Bihar, Patna.
4. The Deputy Director, Health Services, Bihar, Patna.
5. The Civil Surgeon-cum-Chief Medical Officer, Madhubani.
6. In Charge Medical Officer, Primary Health Centre, Khutawna, Madhubani.
7. The In-Charge Medical Officer, Referral Hospital, Foolparas, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate Mr. Digvijay Narayan Singh, Advocate
For the Respondent/s	:	Mr. Ramadhar Singh, GP-25 Mr. Anirudh Kumar Singh, AC to GP-25

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 25-08-2022

1. This writ application has been filed for quashing of order dated 25.06.2019 passed by the Director-in-Chief (Disease Control), Directorate of Health Services, Government of Bihar, whereby the services of the petitioner as "Ambulance Driver" has been found to be void *ab initio*.

2. The brief factual background is that the petitioner claims to have been engaged on daily wages basis as ambulance driver on 10.07.1989, which date is evident from Annexure-P/3



to the writ petition. The petitioner further claims that his services were regularized on the post of driver by the Civil Surgeon-cum-Chief Medical Officer, Madhubani under memo dated 02.08.1991 bearing no.1789. Some appointments came under scrutiny of Hon'ble Lokayukt, Bihar, Patna, wherein a report was submitted by the Civil Surgeon, Madhubani. The petitioner's appointment was considered to be in accordance with law in the proceedings before the Hon'ble Lokayukt, Bihar, however, a show cause notice was issued to the petitioner on 28.05.2019 by the Director-in-Chief (Disease Control), Health Services, Bihar, regarding the validity of the petitioner's appointment. The petitioner responded to the show cause notice by his reply which was received on 01.06.2019. The petitioner's response is worth taking note of and is accordingly being reproduced herein:

" सेवा में,

निदेशक प्रमुख, रोग वि०

स्वास्थ्य सेवायें, बिहार, पटना।

द्वारा:- सिविल सर्जन, मधुबनी।

विषय:- स्पष्टीकरण समर्पित करने के संबंध में।

प्रसंग:- भवदीय, निदेशालय स्वास्थ्य सेवायें, बिहार, पटना के सं०-749 (4), दिनांक:-2.05.2019 तथा सिविल सर्जन, मधुबनी के ज्ञापांक :-1433, दिनांक:-28.05.2019

महाशय,

भवदीय निदेशालय स्वास्थ्य सेवायें, जिला पटना



के स 0:- 749 (4) दिनांक 28.05.2019 तथा सिविल सर्जन मधुबनी के ज्ञापांक:- 1493 दिनांक 20.05.2019 द्वारा स्पष्टीकरण प्राप्त कर दिनांक 02.06.2019 तक उपलब्ध कराने हेतु निर्देश प्राप्त है।

उक्त स्पष्टीकरण के सम्बन्ध में मुझे कहना है कि सिविल सर्जन मधुबनी के ज्ञापांक:- 1530, दिनांक:- 10.07.1989 के द्वारा दैनिक पारिश्रमिक पर एम्बुलेंस चालक के रूप में कार्य करने हेतु स्वीकृति उपरान्त में दि०-18.07.1989 को प्रभारी चि० पदा० , रेफरल फुलपरास को योगदान समर्पित किया।

प्रभारी चि० पदा० रेफरल उपरान्त फुलपरास अपने पत्रांक:-224, दि०:-05.12.1989 द्वारा सेवा चालक के पद पर नियमित करने हेतु उप निदेशक स्व० सेवायें बिहार, पटना को अनुशंसा दिये।

उप निदेशक, स्व० सेवायें बिहार पटना अपने सं०-70(22) दिनांक:- 18.01.1990 द्वारा सिविल सर्जन, मधुबनी को विभागीय निहित प्रावधानों के अन्दर सेवा नियमित करने हेतु आग्रह किये।

सिविल सर्जन, मधुबनी अपने पत्रांक:- 1791 दिनांक:-2.08.1991 द्वारा प्रभारी चि० पदा० रेफरल अस्पताल फुलपरास के पत्र सं० 0-249 दिनांक 28.07.1990 के आलोक में दि० -18.07.1989 से लगातार दैनिक मजदूरी पर कार्यरत के फलस्वरूप चालक के वेतनमान में सेवा नियमित किये।

उक्त आदेश के पालन में नियमित चालक के पद पर योगदान तिथि 03.08.1991 से लगातार सेवा कर रहा हूँ तथा वेतन प्राप्त कर रहा हूँ।

सेवा में संबंधित किसी प्रकार की त्रुटि होने के कारण उत्पन्न किसी प्रकार की कठिनाई के लिये मैं दोषी नहीं हूँ।

अंतः श्रीमान से निवेदन है कि 28 वर्षों से मेरी सेवा को देखते हुए नियुक्ति की वैधता प्रदान करने की कृपा की जाय।

विश्वासभाजन

ह०/-फुलदेव यादव



(फुलदेव यादव)

जीप चालक

प्रा० वा० केन्द्र, खुटौना ।"

3. The response has not been found satisfactory and finding the petitioner's appointment to be void *ab initio* his services have been terminated by the impugned order.

4. Counter affidavit has been filed on behalf of respondent no.5 as also by the Directorate (respondent no.3). In sum and substance, the stand of the respondent authorities is that petitioner's engagement on daily wages was required to be done by a Committee headed by the District Magistrate from a panel created at the district level as per the extant procedure contained in letter dated 03.12.1980 bearing no.16441 addressed to all Divisional Commissioners and District Magistrates by the Personnel and Administrative Reforms Department laying down guidelines for appointment of Class-4 employees.

5. From the petitioner's response to the show cause notice it is evident that the petitioner's engagement on daily wages basis or regularization was not based on any District Level Panel, nor was the same done by a Committee headed by the District Magistrate. His engagement on daily wages basis and subsequent regularization within a very short span of time is by an incompetent authority. The petitioner has also not placed on record a copy of the letter dated 10.07.1989 bearing no.1538,



purporting to be the order of his engagement on daily wages basis.

6. On consideration of the show cause, the authorities have found the petitioner's engagement as well as regularization, both to be illegal and void *ab initio*.

7. The petitioner's counsel has submitted that the petitioner has been visited by the impugned order after a long period of service rendered by the petitioner, post his regularization.

8. The least that was required to be done was to subject the petitioner to a duly constituted proceedings by serving a charge memo and complying with the principles of natural justice. In absence of any charge memo and without conducting any proceedings the impugned order purporting to declare the petitioner's appointment void *ab initio* is unsustainable. The petitioner's counsel has placed reliance on decision of the Apex Court in the case of **Secretary, State of Karnataka & Ors. versus Umadevi & Ors.** reported in (2006) 4 SCC 1.

9. The submission of the parties, in the opinion of the Court, has to be viewed having regard to the facts of the instant case. From the petitioner's reply to show case it is obvious that his engagement/regularization/appointment was not done by the competent authority (District Level Committee), from any



District Level Panel. The petitioner also has not produced the letter dated 10.07.1989 purporting to be the letter under which he has been engaged on daily wages basis. There is also nothing on record to show that prior to the petitioner's engagement/regularization any established procedure was followed, or that it was preceded by any advertisement. The petitioner also does not claim that his engagement/regularization was by the competent authority (District Level Committee), pursuant to an advertisement from a district level panel.

10. It is thus clear from the averments made in the writ petition as also the petitioner's reply to the show cause notice that the initial appointment of the petitioner is without following any procedure and in violation of Article 14 and 16 of the Constitution of India. The then Civil Surgeon, apparently without issuing any advertisement and without considering the departmental instructions for engagement/regularization, has proceeded to induct the petitioner in government service.

11. From the petitioner's reply to the show cause notice it is apparent that even his initial engagement on daily wages basis was not against any sanctioned post. Though he claims his engagement on daily wages basis on the post of "Ambulance Driver", but his regularization has been done on the post of



"Driver".

12. The reliance placed by the respondents on decision of the Apex Court in the case of **State of Bihar and Others versus Kirti Narayan Prasad** in **Civil Appeal No. 8649 of 2018** in the opinion of this Court is correct. This appears to be a case covered by the said decision of the Apex Court and a case where the order of appointment itself from its very inception lacks any sanctity whatsoever.

13. This Court would consider it appropriate to quote paragraph 17 of the judgment of the Hon'ble Apex Court in the case of Kirti Narayan Prasad (supra) which reads as follows:-

“17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the



genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and *void ab initio*. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is *ab initio* void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise. ”

14. This Court does not find any merit in the writ petition for the reasons indicated hereinabove.

15. The writ application is accordingly dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

