

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.376 of 2016

In

Civil Writ Jurisdiction Case No.14050 of 2015

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Md. Alauddin, son of Late Md. Sakiruddin, resident of village- Kumaripur
Meer Tola, P.O.- Kumaripur, P.S.- Manihari, District- Katihar

... .. Appellant/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Health Services, Bihar, New Secretariat,
Bailey Road, Patna
3. The Additional Secretary, Health Services, Bihar, New Secretariat, Bailey
Road, Patna
4. The Special Secretary, Health Services, Bihar, New Secretariat, Bailey Road,
Patna
5. The Deputy Secretary, Health Services, Bihar, New Secretariat, Bailey Road,
Patna
6. The Director-in-Chief, Health Services, Bihar, New Secretariat, Bailey
Road, Patna
7. The Deputy Director, Health Services, Bihar, New Secretariat, Bailey Road,
Patna
8. The Collector, Katihar
9. The Civil Surgeon-cum-Chief Medical Officer, Katihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar Singh, Advocate

For the Respondent/s : Mr.Satyadeo Kumar, SC 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-08-2023

By the judgment impugned dated 07.09.2015, the
learned Single Judge rejected the prayer of the writ petitioner;
appellant herein, to set aside his order of termination.



2. We heard the learned counsel for the appellant and the learned Government Advocate.

3. It is submitted on behalf of the appellant that the appellant was illegally terminated and despite a reconsideration directed by a Division Bench, the same was not done properly. The appellant had continued for 17 years in service and later continued after the writ petition was allowed. It is also pointed out that the appellant's case is similar to the case of the petitioner in CWJC No. 7976 of 2015, titled as **Satya Narayan Mandal Vs. The State of Bihar & Ors.**, produced at Annexure-1 of the supplementary affidavit.

4. The learned Government Advocate, however, refutes the contention and draws a distinction between the two cases. The appellant was illegally appointed and hence, the termination, which is in accordance with the accepted principles of service jurisprudence and the binding precedents of the Hon'ble Supreme Court, has to be upheld.

5. The appointment of the appellant was said to have been made by the Office of the Civil Surgeon, Katihar on 22.10.1986, pursuant to a selection process undergone by the appellant; his name having been sent by the District Employment Officer, Katihar. The appellant is said to have



appeared in an interview held on 28.08.1986 for the post of Dresser and appointed to that post on 22.10.1986. The appellant had been continued up to 28.02.2003 when he was terminated on the ground of his initial appointment being illegal. It was also asserted that, following the Single Bench Judgment in a writ petition i.e. CWJC No. 4702 of 2003, titled as **Sitendra Kumar Singh vs. The State of Bihar & Ors.**, filed by the appellant and others, he was taken back in service.

6. The termination of the appellant was on 28.02.2003 by the Civil Surgeon, Katihar after serving on the appellant a show cause notice and considering his reply. It was found that on 28.08.1986 though an interview was held, only six candidates had appeared and the appellant's name was not one amongst them. The order dated 28.02.2003 issued by the Civil Surgeon, Katihar indicated the aforesaid reasons, which was also extracted by the learned Single Judge in the impugned judgment.

7. The order of termination of the appellant was stayed in **CWJC No. 3423 of 2003** on 04.04.2003. The termination order was also set aside by a common judgment dated 08.09.2003 in a batch of analogous cases, in **Sitendra Kumar Singh** (supra). The State took up the matter in appeal in



LPA No. 969 of 2003, titled as **The State of Bihar & Ors. vs. Abhinaw Kumar**. The judgment of the learned Single Judge was stayed on 08.09.2003. The appeal was ultimately disposed of on 26.06.2006 along with 819 cases by a decision, in **State of Bihar Vs. Purendra Sulan Kit** reported in **2006 (3) PLJR 386**.

8. The operative portion of the aforesaid Division Bench Judgment is also extracted in the impugned judgment. The writ petitions were disposed of with a direction to the authorities of the Health Department, Government of Bihar to reconsider the cases of all the affected employees with a view to find out, on the basis of relevant facts and law; as settled by the Constitution Bench in the case of **Secretary, State of Karnataka vs. Uma Devi; 2006(2) PLJR (SC) 363**, as to which of the affected employees are fit for regularization in terms of that judgment, particularly, in terms of Paragraph 44 of the judgment. The exercise was directed to be completed within a period of six months and till the process was completed the State of Bihar and its authorities were also directed to maintain *status quo* in respect of services of the affected employees as existing on date. The *status quo* order was also made subject to the orders passed by the authorities in respect of the affected employees.



9. The State Government appointed a Five-man Committee which went into the appointments of the individual terminated employees, and gave a report to the State Government on which further action was taken. The appointment of the appellant herein was found to have been made on the recommendation of the Regional Deputy Director of Health, Saharsa, which was illegal. It was also found that the appellant had remained out of service from 16.10.2003 on account of the stay granted in the Letters Patent Appeal filed by the State against the order of the learned Single Judge on 08.09.2003. The learned Single Judge disbelieved the version of the appellant that he was continued after the judgment was delivered by the learned Single Judge.

10. In this context, we have to notice that though the termination order was initially stayed by the learned Single Judge and the writ petition itself allowed; there was a stay of the judgment of the learned Single Judge, in the appeal, which order was dated 08.09.2003. It was after this that the appellant had remained out of service from 16.10.2003. There is nothing to establish his continuance in employment or payment of wages after that. The learned Single Judge, according to us, rightly found that when there was a stay of the judgment of the



learned Single Judge, there could have been no continuance of the appellant in employment, based on the said judgment. Upon the stay being granted by the Division Bench, the termination order revived. We find no reason to accept the aforesaid contention of the appellant, but, however, proceed to examine the validity of the termination as such, as examined by the learned Single Judge.

11. The learned Single Judge relied on **State of Orissa vs. Mamata Mohanty; (2011) 3 SCC 436**, wherein the procedure of employment and recruitment through employment exchanges, without advertisement in the newspapers, was deprecated. It was held that though earlier, there was an opinion that calling for names from the employment exchange would curb the manifest nepotism and corruption in public employment, long experience has taught the courts, otherwise. Later, it has been concluded that there should be an appropriate method consistent with the requirement of Article 16 of the Constitution, which would be in the nature of a notice published in the appropriate manner calling for applications and the consideration to be made from those applying to such public advertisements. It was held that this does not necessarily restrict requisitioning of names from the employment exchange, but, in



addition to the same, there should be a mandatory requirement on the employer to invite applications from the open market by making advertisements in the public media. It was categorically held that, the mere requisitioning of names from the employment exchange or putting a note on the notice board, would not meet the requirement of Articles 14 and 16 of the Constitution, since the said procedure shuts out many eligible persons from being considered.

12. The learned Single Judge also relied on **Uma Devi** (supra), which came down heavily on backdoor appointments and *inter alia* held that an illegal appointment 'void ab initio' made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances. However, an irregular appointment could be regularised, if it has been made by a competent authority, to a vacant sanctioned post and in accordance with Article 14, by affording equal opportunity for participation from the open market of eligible candidates.

13. The appellant's candidature was asserted to be from the employment exchange; but there is no public advertisement made and hence, the eligible candidates from the open market were not participated. It has also come out from the



initial order of the Civil Surgeon, Katihar that though an interview was conducted on the specified date, the appellant was not among the persons who figured in the interview. The appellant is also said to have been appointed on the recommendation of the Regional Deputy Director of Health, Saharsa. Obviously, appellant's appointment was a clear instance of backdoor appointment & nepotism.

14. We have already held that the claim of the appellant that he was continued after the judgment of the learned Single Judge, setting aside the termination, cannot be accepted.

15. Now, we come to the contention of the learned counsel for the appellant that his case is similar to that in CWJC No. 7976 of 2015, titled as **Satya Narayan Mandal vs. The State of Bihar & Ors.**, produced as Annexure-1 along with a supplementary affidavit dated 25.07.2023. The petitioner therein was also a person terminated by the Civil Surgeon-cum-Chief Medical Officer, Katihar by the identical memo dated 12.12.2014 issued against the appellant herein also. The petitioner in CWJC No. 7976 of 2015 was at sl. no. 3 and the termination was from the post of a Driver.

16. Having gone through the judgment, we are of



the opinion that but for the appellant herein and the petitioner Satya Narayan Mandal in Annexure-1 having been terminated by the same order, there is no identity of facts coming out in the appointment of both the said persons.

17. Satya Narayan Mandal, the petitioner in Annexure-1, was working as a casual wage employee in the T.B. Hospital at Bhojpur against the post of Driver and by virtue of a Circular dated 30.04.1986 issued by the Directorate of Health Services, providing for regularization of services of a casual employee; he was brought into the regular establishment on a temporary basis by Memo No. 668 dated 18.08.1989. Even the said appointment was temporary and subject to termination without prior notice. The Director of Health Services by order dated 15.02.1992 transferred him to Purnea with a clear direction that if any vacancy arises in the post of a Driver, the Civil Surgeon would take appropriate steps for absorption of the petitioner against the said post. The petitioner was relieved by the Superintendent of T.B. Hospital, Bhojpur on 22.02.1992 and joined Purnea on 13.03.1992. The petitioner therein was subsequently transferred to Primary Health Centre, Manihari in the District of Katihar from where he was terminated.

18. The petitioner in Annexure-1 challenged the



termination order on quite distinct grounds, from that placed before this Court by the appellant herein. The petitioner therein had a claim for regularization and absorption in the regular establishment. As far as the identity of facts, it is confined to both being terminated by the same order, which termination order, along with a few others, were directed to be reconsidered in **Purendra Sulan Kit** (supra). It was noticed by the learned Single Judge who disposed of the writ petition that while re-examination of the order of termination was pending before the Health Department, the petitioner in Annexure-1 was granted an Assured Career Progression (ACP) together with consequential benefits. Hence, the petitioner therein was continued in employment as established by the orders produced of the ACP; which is absent in the case of the appellant herein.

19. The petitioner in Annexure-1 had also asserted that his was not a case of fresh appointment and was one of regularization in the light of a departmental circular dated 30.04.1986, which had the approval of the Directorate also. He was a person who was taken into employment as a casual wage employee, later temporarily absorbed in the regular establishment and then regularized in a sanctioned post of Driver. The learned Single Judge held that the case of the



petitioner in Annexure-1, did not reflect a case of backdoor appointment; which issue was not at all considered in the order of termination. The direction in **Purendra Sulan Kit** (supra) to consider each case on its own merits, was conveniently not carried out in the case of the petitioner in Annexure-1. It was on these distinct facts that the writ petition was allowed by Annexure-1. There are no facts identical to that of the appellant herein; insofar as the respective appointments are considered.

20. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
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