

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9953 of 2011

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Krishna Nand Jha S/O Late Bedanand Jha R/O Village-Parwaha, P.S.-
Forbesganj, Distt. Araria

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director-In-Chief, Health Services, Govt. Of Bihar, Patna
3. The Director, Health Services, Govt. Of Bihar, Patna
4. The Additional Director, Health Services, Govt. Of Bihar Patna
5. The Deputy Director, Health Services, Govt. Of Bihar, Patna
6. The Civil Surgeon-Cum-Chief Medical Officer, Sitamarhi
7. The Collector, Sitamarhi
8. The Chief Malaria Officer, Govt. Of Bihar Patna
9. The District Malaria Officer, Sitamarhi

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh, Sr. Advocate Mr. Prabhat Kumar Singh, Advocate Mr. Manisha Singh, Advocate
For the Respondent/s	:	Mr. Prem Ranjan Raj, Advocate Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 13-02-2023 Heard Mr. Ashok Kumar Singh, learned senior counsel assisted by Mr. Prabhat Kumar Singh, learned counsel for the petitioner and Mr. Kamlesh Kishore, learned AC to SC-12 for the State.

2. This writ application has been filed seeking to challenge the order dated 06.05.2011 passed by Justice Uday Sinha, One Man Inquiry Committee in Case No. 131 of 2010 whereby and whereunder the case of the writ petitioner has been considered in the light of the directions of the Hon'ble Division



Bench of this Court as contained in the order dated 11.02.2010 passed in L.P.A. No. 1623 of 2009 and finally it has been held by the One Man Committee that the appointment of the petitioner was in the nature of a backdoor appointment, without following the established procedure and such appointments are in the teeth of the judgment of the Hon'ble Supreme Court in the case of **Md. Asif and Others vs. State of Bihar and Others** reported in (2010) SCC 475 and in the case of **State of U.P. and Others vs. Desh Raj** reported in (2007) 1 SCC 257.

3. By the order as contained in Annexure '24' to the writ application the One Man Committee of Mr. Justice (Retd.) Uday Sinha has been pleased to reject the application.

4. Learned senior counsel for the petitioner has assailed the impugned order on two grounds. Learned counsel submits that the One Man Committee could not have examined the legality and illegality in the matter of appointment of the petitioner and by doing that the Committee has exceeded its mandate. It is his further submission that in any case the Committee could not appreciate that the person similarly situated to the petitioner have been retained in service, therefore, the petitioner cannot be thrown out on the ground that his appointment was illegal and it was not done by following the procedures required to be followed for purpose of public employment.



5. Learned counsel for the State has contested the submissions of learned senior counsel for the petitioner. It is submitted that the present case as well as the similarly situated cases have got chequered history. It is submitted that by the impugned order the One Man Committee has rightly considered the matter of appointment of the petitioner and as to whether the appointment is in accordance with Articles 14 and 16 of the Constitution of India. Learned counsel submits that there being a categorical finding of the One Man Committee that for purpose of appointment no advertisement was issued, the appointment was not done by the competent authority and that it was antedated, the petitioner has no right to seek appointment and/or to continue with the same.

6. Learned counsel further submits that the plea of negative equality claimed by the petitioner cannot be a basis to issue a Writ of Certiorari to quash and cancel the impugned order. In such matters, it is submitted that no Mandamus need be issued and the Court must confine its consideration to the challenge made to the impugned order. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **State of Bihar and Others vs. Devendra Sharma** reported in (2020) 15 SCC 466. It is submitted that this Court had earlier directed for listing of the present case after disposal of the case of **Devendra**



Sharma (supra). It is submitted that in the case of **Devendra Sharma** (supra), the Hon'ble Supreme Court has considered all the four categories of cases which were examined earlier by the Five Members Committee. In Paragraph '38' of its judgment the Hon'ble Supreme Court has taken note of the fact that so far as the appointments of '91' candidates are concerned those have being examined by the Five Members Committee and the committee has found them to a be a case of irregular appointment.

7. The Hon'ble Supreme Court observed in clear words that "none of the candidates in the present set of appeals could point out that they were appointed in a manner meant for filling up of vacant post of public employment i.e. by advertisement and by giving opportunity to all eligible candidates to apply."

8. In the aforementioned background, the submissions of learned counsel for the State is that what has prevailed with the Hon'ble Supreme Court is the fact that the appointees could not point out to the Court that they were appointed in a manner meant for filling up of vacant post of public employment. It is submitted that the case of the present petitioner is an identical case in which the petitioner is unable to demonstrate that there was any advertisement inviting applications from all eligible candidates to apply for the post.

9. Having heard learned senior counsel for the petitioner



and the State as also on perusal of the judgment of the Hon'ble Supreme Court in the case of **Devendra Sharma** (supra), this Court finds that the Hon'ble Supreme Court has in fact taken note of the series of judgments rendered by this Court in identical matters. The Hon'ble Supreme Court has also taken note of the fact that the 91 candidates were found to be a case of irregular appointment. The plea of negative equality, therefore, did not work before the Hon'ble Supreme Court. The Hon'ble Supreme Court has in Paragraphs '34', '35' and '36' of the judgment observed as under:-

“34. In civil appeal arising out of SLP (Civil) No. 20033 of 2012, the respondent was appointed by Dr A.A. Mallick. Such appointments have been found to be illegal by this Court in *Ashwani Kumar*¹¹. We find that there is no reason to re-examine the appointments made by Dr A.A. Mallick. Such appointments have been adversely commented upon in *Ashwani Kumar case*¹¹. Therefore, no right will accrue in favour of the respondent. Consequently, the appeal arising out of SLP (Civil) No. 20033 of 2012 is allowed and the order passed by the High Court is set aside.

35. Lastly, it is argued that employees have been working for many years, some for more than 25 years, therefore, humanitarian view should be taken to set aside the order of termination and regularise their services so as to make them entitled to pension and other retirement benefits.

11. *Ashwani Kumar v. State of Bihar*, (1997) 2 SCC 1 : 1997 SCC (L&S) 267



36. We do not find any merit in the said argument. A Full Bench of the High Court in *Rita Mishra v. Director, Primary Education* ²⁶ while dealing with appointment in the Education Department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary *stricto sensu* springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.”

10. In the facts of the present case, this Court has after going through the judgment of the Hon’ble Division Bench reported in the case of **State of Bihar & Ors. vs. Sohan Roy and Ors.** reported in **(2010) 2 PLJR 397** further found that while constituting the one man committee, the Hon’ble Division Bench had clearly mandated amongst others that “ A one man committee of Hon’ble Mr. Justice Uday Sinha, a retired Judge of

26. 1987 SCC OnLine Pat 159 : AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701



this Court shall look into the various facets of nature of appointments that were given to the writ petitioners with a view to adjudicate the legality of their appointments and continuance in service....”

11. This Court, therefore, finds that vide impugned order the One Man Committee has rightly examined the issue of appointment of the petitioner. No interference is required.

12. This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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