

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1835 of 2017

In
Civil Writ Jurisdiction Case No.18912 of 2011

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Ajay Kumar Son of Late Ramshray Prasad Singh, Village- Parseni, Police
Station- Barbigha, District- Sheikhpura.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Director-in- Chief, Health Services, Govt. of Bihar, Patna.
3. Regional Deputy Director, Health Services, Magadh Division, Gaya.
4. Civil- Surgeon-Cum- Chief Medical Officer, Nalanda.
5. Incharge Medical Officer, Additional Primary Health Centry Kadirganj,
Nawada.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rakesh Kumar Shrivastava, Advocate Mr. Krishna Kant Singh, Advocate
For the Respondent/s	:	Mr. S.D.Yadav -AAG9

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-07-2023

The appellant challenges the order in CWJC no.18912 of 2011 which was disposed of by a common judgment in a batch of writ petitions. Learned counsel for the appellant before us submits that one of the writ petitions disposed of, CWJC no. 20511 of 2011 was also appealed against. Therein a Division Bench of this Court in LPA no. 1644 of 2014 by a judgment dated 6.12.2021 considered the judgment of the Hon'ble Supreme Court in the case of **State of Bihar and others vs.**



Devendra Sharma, [(2020)15 SCC 466] and directed consideration of whether the writ petitioner's appointment is illegal or irregular.

We have gone through **Devendra Sharma (supra)** in which the Hon'ble Supreme Court considered the issue in the background of the binding precedent in **State of Karnataka and others vs. Umadevi and others [(2006) 4 SCC 1]**. There was a distinction drawn in so far as invalid/wrong/illegal/irregular selections. In so far as illegal selections are concerned, it was held that there was nothing further to be done specifically following the ratio of the judgment in **Umadevi(supra)**; when such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were found to be backdoor entries, a clear act of nepotism and favouritism which could not have been sustained on any judicial standard. It was also held that such illegal appointment is a result of only arbitrary process.

We have to decide whether the present case warrants a consideration where the appellant's appointment is illegal or irregular. We first notice the facts of CWJC no.20511 of 2011



which was noticed by the learned Single Judge in paragraph 29 which reads as follows:

“29. The petitioner of CWJC No. 20511 of 2011 has claimed that he was appointed as Male Family Welfare Worker on 02.11.1989. The petitioner's appointment letter has been found to be forged. The plea of the respondents in their counter affidavit is that the petitioner worked on a forged appointment letter. Nothing has been stated in the writ application about the manner in which the petitioner was selected for appointment by the Civil Surgeon. cum- Chief Medical Officer, Sahebganj. Even as per the petitioner's averment, no notice was issued and no selection process was followed for making appointment added with the fact that the enquiry committee has come to a finding that the petitioner's appointment letter itself was forged.”

We also notice the facts of the petitioner's case as considered by the learned Single Judge in paragraphs 26 to 28 which are extracted hereunder:

“26. The petitioner of CWJC No. 18912 of 2011 has claimed that he submitted his application in response to a notice published on the notice board of the office of Regional Deputy Director (H), Magadh Division, Gaya. Pursuant thereto, by a letter No. 54 dated 12.05.1989, he was asked to appear for interview on 27.05.1989. The so-called interview



letter has been annexed as annexure-I the writ application. The letter does not mention even the post against which the petitioner had applied and the post for which he was invited to appear for examination/ interview. It is his claim that he was appointed by letter dated 27.07.1989 issued by Regional Deputy Director (H), Magadh Division, Gaya. Upon enquiry, it was found that the letter No. 41C dated 27.07.1989, which the petitioner claimed to have issued to him appointing him against class-III post, was in fact issued to one Arun Kumar, Lipik.

27. In the counter affidavit the respondents has taken a plea that the Regional Deputy Director (H), Magadh Division, Gaya did not have any authority to appoint a person against class- III post. It has also been stated in the counter affidavit that the petitioner's name does not figure in the acquittance roll. Letter No. 54 dated 12.05.1989 which, according to the petitioner, was written to him inviting him for interview was, as per counter affidavit, addressed to Civil Surgeon-cum- Chief Medical Officer, Aurangabad and not to the petitioner.

28. These facts point towards one and only thing that the petitioner's appointment was fraudulent. This is evident from the fact that neither any notice inviting applications could be found in the so-called interview letter nor name of the post is mentioned. The interview letter has not been found to be even issued to the petitioner and the petitioner's name could not be found in acquittance roll.”



A reading of the distinct facts indicate that in the present case the petitioner was appointed by a person who has absolutely no authority to carry out such an appointment. A proper public notice was not given and the interview was conducted based on a notice allegedly published on the notice board of the office of the Regional Deputy Director; who had no authority to carry out such a selection. Later on, the appointment letter allegedly issued to the petitioner also did not mention even the post against which the petitioner had applied and the post for which he appeared pursuant to the notice. It was also found that the appointment letter issued, though it was not a proper one and issued without jurisdiction, was also in the name of yet another person and not the petitioner himself.

In Devendra Sharma (supra) one of the categories considered were that of appointments made by a person not competent so to do. Some of the appointments were made by Regional Deputy Directors as four posts of Assistant Director were converted to Regional Deputy Directors. It was held “Therefore, the Assistant Director was incompetent to make appointments against the sanctioned posts except in emergent cases and so is Regional Deputy Director.” The facts herein are identical and more prejudicial to the appellant.



In the totality of the circumstances, we are of the opinion that there could be no similarity found from the facts as available in CWJC no.20511 of 2011. The petitioner’s case clearly is an illegal appointment as has been found in Devendra Sharma (supra).

We find no reason to entertain the appeal. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/Saurabh

AFR/NAFR	
CAV DATE	
Uploading Date	6.7.2023
Transmission Date	

