

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1512 of 2018

In
Civil Writ Jurisdiction Case No.1156 of 2011

Umesh Prasad @ Umesh Yadav, Son of Sri Dev Narayan Yadav, resident of Village-Biharpur, Police Station-Lakhnaur, District-Madhubani.

... .. Appellant.

Versus

1. The State of Bihar through the Director-in-Chief, Health Services, Bihar, Patna.
2. The Civil Surgeon-cum-Chief Medical Officer, Madhubani.
3. The Incharge, Medical Officer, Primary Health Centre, Ghoghardiha, District-Madhubani.

... .. Respondents.

Appearance :

For the Appellant	:	Mr. Ajoy Kumar Chakraborty, Advocate.
For the State	:	Mr. S.D.Yadav, AAG-9.
		Mr. Anil Kumar Verma, AC to AAG-9.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-09-2024

Pursuant to our previous order, Ms. Dipa Rani Singh, Director-in-Chief, Health Department, is present in the Court.

2. Appellant has assailed the order of the learned Single Judge dated 07.09.2018 passed in C.W.J.C. No.1156 of 2011.

3. Appellant was appointed as a Basic Health Worker on 22.07.1989. Thereafter, the concerned respondents have noticed that appellant's appointment was not in accordance



with the relevant Regulations/Circular/Official Memorandum and contrary to Circular No.16440 dated 03.12.1980. Resultantly, his services have been discontinued on 19.06.2001. It was subject matter of scrutiny on judicial side in respect of similarly situated persons, resulted in constitution of One Man Committee for the purpose of examination of service records of such of those persons who were appointed on similar line. Thus, the appellant's case was registered as Case No.117 of 2010 before the One Man Enquiry committee. Notice was issued to the appellant for his appearance on 07.09.2010 at 10:30 A.M. He had appeared. One Man Enquiry Committee passed the following order on 07.09.2010:

“Let the petitioner file petition in proper form impleading all necessary respondents. Four weeks time is allowed to file the same.

Put up on 6th October, 2010”

4. Appellant failed to appear on the date fixed, i.e. 06.10.2010. Thereafter, one more date was fixed as 27.10.2010, even on that date, there was no representation or appellant appeared, resultantly, matter was reserved on 27.10.2010 and order was passed on 22.11.2010. Feeling aggrieved by the order dated 22.11.2010 of the One Man Enquiry Committee, appellant



preferred C.W.J.C. No.1156 of 2011. Order of the One Man Enquiry Committee, it is evident that Case No.117 of 2010 was arising out of C.W.J.C. No.7294 of 2007 (Umesh Prasad Versus State of Bihar and Others).

5. C.W.J.C. No.1156 of 2011 was heard by the learned Single Judge on 07.09.2018 and the following order was passed:

- “1. The present writ petition has been filed for quashing the judgment passed in case no.117 of 2010 by the One Man Enquiry Committee headed by Hon’ble Mr. Justice Uday Sinha, a retired Judge of this High Court. The petitioner has further prayed for declaring his termination to be illegal.
2. Admittedly, the petitioner was relegated to the remedy of his case being decided by the One Man Enquiry Committee with his consent and now, the Enquiry Committee, headed by a retired Judge of this Court has passed the order dated 22.11.2010, in which no fault can be found by this Court.
3. Having regard to the facts and circumstances of the case and considering the judgment passed by the One Man Committee dated 22.11.2010, I do not find any merit in the present writ petition,



accordingly, the same is dismissed.”

6. Feeling aggrieved by the order of the learned Single Judge dated 07.09.2018 passed in C.W.J.C. No.1156 of 2011, the present L.P.A. is filed by the appellant.

7. Learned counsel for the appellant submitted that the appellant has not been provided an opportunity before the One Man Enquiry Committee. Appellant has worked from 22.07.1989 to 19.06.2001. Merely violation of Circular dated 03.12.1980 at the time of appointing him and the fact that the appellant has not undergone certain training for the purpose of holding the post of Basic Health Worker, after more than a decade, displacing him abruptly is arbitrary. Therefore, the order of the learned Single Judge dated 07.09.2018 passed in C.W.J.C. No.1156 of 2011 as well as the order dated 22.11.2010 of the One Man Enquiry Committee are liable to be set aside and the appellant shall be reinstated in service with all consequential benefits.

8. Per contra, learned counsel for the State resisted the aforementioned contentions and submitted that large number of persons similar to the appellant were appointed. They had suffered order before the Judicial Forum. On this point, he has pointed out the decision of the Hon’ble Supreme Court in the



case of **State of Bihar and others Versus Devendra Sharma**, reported in **(2020) 15 Supreme Court Cases 466**.

9. It is also submitted that no advertisement was issued before selection and appointment of the appellant to the post of Basic Health Worker. There are violation of Regulations. Basic Health Worker is a Government post and it has to be filled up in accordance with the Regulations while adhering to Articles 14 and 16 of the Constitution of India. The same has not been followed.

10. Heard the learned counsel for the respective parties.

11. Undisputed facts are that appellant was appointed as a Basic Health Worker on 22.07.1989 by an incompetent authority in the light of the Circular dated 03.12.1980 which is one of the issue decided by the One Man Enquiry Committee. Further, he has also taken note of that appellant has not undergone certain training to hold the post of Basic Health Worker. In the absence of the aforementioned ingredients before his selection and appointment, he is not entitled to hold the post of Basic Health Worker.

12. In fact, we are of the view that it is a case of sympathetic consideration for the reasons that appellant was



holding the post of Basic Health Worker from 22.07.1989 to 19.06.2001. However, our hands are tied in view of the decision of the Hon'ble Supreme Court in the case of **State of Bihar and others Versus Devendra Sharma** (cited supra) in which the Hon'ble Supreme Court has nullified such of those appointments.

13. One Man Enquiry Committee has observed principles of natural justice before passing order on 22.11.2010 for the reasons that initially notice has been issued to the appellant for his appearance on 07.09.2010. Appellant had appeared. Thereafter, his petition was not in proper form and other issues were taken note of and the matter was adjourned to 06.10.2010. On 06.10.2010, appellant failed to appear. Thereafter, in order to provide one more opportunity, matter was adjourned to 27.10.2010. On that date, appellant failed to appear, resultantly, matter was reserved for order and it was pronounced on 22.11.2010. Therefore, the aforementioned contention of the appellant that the One Man Enquiry Committee has not provided an opportunity is not tenable.

14. Perusal of the record, it is evident that the selection and appointment of the appellant is not in terms of the relevant Regulations governing the post of Basic Health Worker.



Assuming that who had selected and appointed the appellant had adhered to the relevant Regulations, still he had failed to comply in not notifying the Basic Health Worker Post through advertisement like Employment Exchange or notifying in the Newspaper so as to adhere to Articles 14 and 16 of the Constitution of India. The Hon’ble Supreme Court in the case of **Renu and others Versus District and Sessions Judge, Tis Hazari Courts, Delhi and another**, reported in **(2014)14 SCC 50**, elaborately considered how the Articles 14 and 16 are required to be adhered insofar as public post is concerned.

15. Taking note of the aforementioned facts and circumstances, appellant has not made out a case so as to interfere with the order of he learned Single Judge dated 07.09.2018 passed in C.W.J.C. No.1156 of 2011.

16. Accordingly, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.09.2024.
Transmission Date	NA

