

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1134 of 2010

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Awadhesh Mishra S/O Late Gangadhar Mishra Posted As Basic Health Inspector Bhi In Primary Health Centre Guanaha, West Champaran, R/O Vill. Khiriyaghat, P.S. Baria, Distt.- West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director In Chief, Health Services, Bihar, Patna
2. The Chief Malaria Officer, Bihar, Patna
3. The In-charge, District Malaria Officer, Bettiah, West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajoy Kumar Chakraborty
For the Respondent/s : Mr. Raghwanand, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-04-2024

The Court had earlier directed for listing the present case after disposal of LPA No. 1872 of 2011 and thereafter the Court had directed to list all the writ petitions after the disposal of SLP(C) of 29303-29310 of 2014.

2. Heard Mr. Ajoy Kumar Chakraborty, learned counsel for the petitioner and Mr. Raghwanand, learned counsel appearing on behalf of the State.

3. The present writ petition has been filed for direction upon the respondents to reinstate the services of the petitioner to consider the case of the petitioner in the light of the order dated 09.11.2010 passed in C.W.J.C. No. 1379 of 2010 and analogues cases and also in terms of the criterions



incorporated in the report contained in memo no. 1117(4) dated 20.09.2007 submitted by the five members high powered committee

4. Learned counsel for the petitioner submits that the State Government launched a DDT Spray Programme in the District and West Champaran and in pursuance to the programme, the respondent no.2 directed to In-charge District Malaria Officer Bettiah to make of Malaria Eradication Programme of the State Government a success to save the lives of the people at large. Upon the direction of the respondent no.2, respondent no.3 has invited application through the office notice Board for appointment in five monthly DDT Spray Programme and the petitioner had applied for the same and thereafter the petitioner has been appointed as Basic Health Inspector under the five monthly spray programme in the year 1987.

5. Learned counsel for the petitioner submits that the respondent no.2 has directed the respondent no.3 to send the names with detailed bio-data and past health service experience and education for regularization of service. The respondent no.3 invited a fresh applications from the from the candidates already worked as seasonal B.H.I. and after recommendation made by the respondent no.3, respondent no.2 gave approval for



regularization of the service of the petitioner vide Memo No. 2682 dated 13.06.1988. The petitioner remained in continuous and unblamed service for long 14 years. The respondent no.2 issued a mass termination order contained in Memo No. 1401 dated 16.11.2002. The petitioner moved before this Court in C.W.J.C. No. 473 of 2003.

6. Learned counsel for the petitioner further submits that the petitioner had approached this Hon'ble Court in C.W.J.C. No. 473 of 2003 and after hearing the parties and considering the materials on record the Hon'ble Court has been pleased to set aside the termination order dated 08.09.2003. Thereafter, the respondent authority has filed LPA No. 273 of 2004 against the order dated 08.09.2003 which was disposed of vide order dated 26.06.2006 with a direction to the Health Department, Government of Bihar to consider the cases of petitioner and other similar situated persons within a period of six months.

7. Learned counsel for the petitioner further submits that pursuant to the aforesaid direction, the State Government has constituted a Five Members Committee to resolve the issue. The Five Members Committee submitted a joint report before the Division Bench on affidavit and fixed



five criteria to place the affected employees under the irregular category for regularization of their services whosoever are as follows;

(I) Whether the post was sanctioned or vacant at the relevant time?

(II) Whether the appointment was made by the competent authority?

(III) Whether the employee possessed the requisite educational qualifications as required for?

(iv) Whether the employees were in continuous service for more than 10 years?

(v) Where there was any court's order with respect of appointment?

8. Learned counsel for the petitioner submits that in terms of the five criteria fixed by the five members committee for consideration of irregular category, the petitioner has also made his representation on 22.11.2007 before the respondent no.1 and submitted that his case is absolutely placed in irregular category and standing equally and identically on the same and similar footing as that of the case of those 91 affected employees whose cases have been considered under irregular category and their services have been reinstated without back



wages but the petitioner's case has been denied by putting his name in illegal category by putting him name in illegal category.

9. Learned counsel for the State relies upon the judgment of the Hon'ble Supreme Court in the case of ***State of Bihar & Ors. Versus Devendra Sharma*** reported in (2020) 15 SCC 466.

10. Learned counsel for the State submits that the Hon'ble Supreme Court had considered all the four categories of cases which were examined earlier by the Five Members Committee. In paragraph-13 of the Hon'ble Apex Court has taken note of the fact that so far as the appointment of 91 candidates are concerned, those have been examined by Five Members Committee and Committee has found them to be the case of the irregular appointment. The Hon'ble Apex Court observed in clear words that that none of the candidates in the present of appeals had pointed out that they were appointed in the manner meant for the filling of the vacant posts of public employees i.e. by advertisement and by giving the opportunity to all the eligible candidates to apply. Learned counsel for the State has also relies upon the paragraph-34, 35 and 36 of the judgment observed as under;

34. In civil appear 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; 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. Therefore, no right will accure 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.

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 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.

11. Learned counsel for the State submits that a Co-ordinate Bench of this Hon'ble Court has also relied upon the aforesaid judgment of the Hon'ble Apex Court and has deal with the similar situated persons and dismissed the writ petition order dated 13.02.2023 in C.W.J.C. 9953 of 2011.

12. Learned counsel for the State also relied upon the judgment *in the case of State of Bihar Ors. Versus Kirti Narayan Prasad reported in (2019) 13 SCC 250*, paragraph nos. 11 & 12 of which are quoted hereinbelow;

11. It is not in dispute that the Government of Bihar in its Administrative Reforms Department had issued instructions for appointment to Class III posts in the government office under its Circular No. 16440 dated 3-12-1980. The said circular applies to Class III posts other than the posts which are filled in by appointment of candidates selected by Bihar Public Service Commission after a competitive examination and to the posts which are governed by the Government Resolution dated 28-1-1976. The said circular sets out a detailed procedure for notifying the vacancies in Secretariat and its



attached offices. District Magistrates and other mufassil offices and for calling for applications, preparation of a common merit list and appointment from the said common merit list in the order of merit. It also provides the procedure for constitution of Selection Committee, preparation of merit lists and wait list, duration of merit lists and wait list. A similar Circular No. 16441 was also issued on 3-12-1980 for appointment to Class IV posts in the mufassil offices of the Government. These circulars had been issued to avoid discrimination in appointment to Class III and Class IV posts in the government offices and provide for generalised procedure in consonance with Articles 14 and 16 of the Constitution. The appointment of the writ petitioners have not been made in accordance with these circulars. Therefore, the contention of the learned counsel for the writ petitioners is that since the writ petitioners have served for more than 10 years and some of them have even completed 20 years of service, they ought to have been regularised in terms of the judgment in State of Karnataka vs. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753 and State of Karnataka V. M.L. Kesari (2010) 9 SCC 247 : (2010) 2 SCC (L & S) 826.

12. In Umadevi (supra) the Constitution Bench has held that unless appointment is made in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment



comes to an end at the end of the contract, if it was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. A temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In para 43 of Umadevi (supra), it was held as under: (SCC pp. 36-37)

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a



contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to



any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."
(emphasis supplied)

13. I have heard learned counsel for the parties and have gone through the materials on record and I find that the respondents have relied upon the aforesaid judgment of Hon'ble Apex Court laid down in this regard (supra).

14. According to the principle of law settled in the aforesaid judgments, rendered by the Hon'ble Apex Court, no case is made out for interference.

15. This Court is of the view that the present case is squarely covered by the aforesaid judgment rendered by the Hon'ble



Apex Court in the case of *State of Bihar & Ors. Versus Devendra Sharma reported in (2020) 15 SCC 466* and *State of Bihar Ors. Versus Kirti Narayan Prasad reported in (2019) 13 SCC 250*,

16. This Court, therefore, finds that there is no case made out for the interference in the matter accordingly the same is dismissed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
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