

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10029 of 2023

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Kapildeo Ram S/o Late Daroga Ram, Resident of Kahar Toli, Road No. 1.
Yarpur, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director in Chief (Administration) Health Services, Bihar, Patna.
3. The Director in Chief , (Disease Control Public Health and Para Medical) Health Services, Bihar, Patna.
4. The Civil Surgeon cum Chief Medical Officer, Patna.
5. The Incharge Medical Officer, Primary Health Centre, Naubatpur Patna.
6. The District Provident fund Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Adv.
For the State : Mr. Aditya Nath Jah, AC to SC 18

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-01-2024

Heard Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner and Mr. Aditya Nath Jha, learned counsel representing the State.

2. The short facts which led to the filing of the present writ petition are that while the matter of illegal/forged appointment came to light, many persons were terminated from service wherein petitioner's service being basic health worker was terminated by the Civil Surgeon-cum-Chief Medical Officer, Patna vide order contained in Memo No. 1479 dated 04.03.2003 on account of appointment being forged. Subsequently, in the light of the order passed in LPA No. 946 of



2003, a Five Men Committee was constituted by the State Government to examine each and every matter of forged/illegal appointment and accordingly the Committee examined the matter of appointment of all the employees and submitted a report in the year 2007, wherein the petitioner's appointment has also been examined and found to be forged. The Committee recommended the service of the illegal/forged appointees be terminated from the date of issuance of initial appointment and no claim can be considered in future since the same is void *ab initio*. Ultimately, the matter travelled upto the Hon'ble Supreme Court and so many SLPs. have been preferred by the aggrieved parties.

3. The petitioner also preferred Civil Appeal No. 8693 of 2018, arising out of SLP (Civil) No. 34280 of 2014 before the Hon'ble Supreme Court against the order dated 24.09.2014 passed by the Hon'ble Court in LPA No. 1718 of 2010. Finally, the aforementioned Civil Appeal No. 8693 of 2018 was heard by the Hon'ble Supreme Court along with other analogous appeals bearing Civil Appeal No. 8649 of 2018 (The State of Bihar vs. Kirti Narayan Prasad) and it came to be dismissed vide judgment dated 30.11.2018. It is further submitted that in another batch of SLPs. bearing No. SLP (c) No. 11885 of 2012



(The State of Bihar & Ors. vs. Devendra Sharma) and other analogous cases in similar matter of illegal/forged appointment, the Hon'ble Apex Court, in its judgment dated 17.10.2019, affirmed the order of termination of the forged/illegal appointment.

4. It is the case of the petitioner that admittedly the order of termination has been affirmed by the highest Court of the land, however, this is the fact that the persons who were also appointed along with the petitioner and who were also party in the SLP they have been allowed the retiral benefits and the pension, the name of which have been duly mentioned in paragraph no. 25 of the writ petition. Based upon the aforesaid fact, the petitioner submits that he also filed a representation to ensure payment of other benefits as has been granted in favour of other identically situated persons, however, the same came to be rejected vide Memo No. 421(4) dated 17.03.2023 under the signature of the Director-in-Chief (Disease Control, Public Health and Para Medical) Health Services, Bihar, Patna which is challenged here in the present writ petition.

5. Mr. Shiv, learned counsel for the petitioner basing upon his claim, especially at paragraph 4.C(1) of the Bihar State Litigation Policy, 2011, submits that the Government of Bihar



being a model employer should accord the similar benefit to the persons who are identically situated.

6. A counter affidavit has been filed on behalf of the respondent-State. Referring to the order passed by the Hon'ble Supreme Court in the case of ***Devendra Sharma*** (supra), submission has been made that it is the categorical finding of the highest Court that once it is found that very appointment is illegal and non-est in the eye of law, no statutory entitlement for salary or consequential right of pension and other monetary benefits can arise. Further, in response to the submission made on behalf of the petitioner with respect to the identically situated person, who is getting other retiral benefits and pension, submission has been made that in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***The State of Bihar & Ors. vs. Kirti Narayan Prasad (Civil Appeal No. 8649 of 2018)***, the Health Department, Government of Bihar has also issued a letter No. 1008(4) dated 11.07.2023 and Corrigendum letter No. 1165(4) dated 04.08.2023 with specific direction to the Regional Authorities to terminate all those persons from service if they are continuing in service and further to stop the pension, etc.

7. At this stage, learned counsel for the petitioner



submits that in identically situated matter, the coordinate Bench of this Court has relegated the matter to the authority concerned to examine the claim of the petitioner in the light of the judgment rendered by Hon'ble Court in the case of ***Raghunandan Mishra Vs. State of Bihar*** reported in ***1985 PLJR 446*** in which the learned Court interpreted Rule 46 of the Bihar Pension Rules, 1950 which provides that the payment of pension of a government servant cannot be withheld in case of termination from service. Further reliance has also been made on a judgment of the Hon'ble Court in the case of ***Union Bank of India & Ors. vs. C.G. Ajay Babu & Anr.*** reported in ***(2018) 9 SCC 529***.

8. Learned counsel for the petitioner, thus submits that if the case of the petitioner be also relegated in terms of the order passed by the coordinate Bench of this Court in the case of ***Ganauri Prasad vs. The State of Bihar & Ors.*** (CWJC No. 7530 of 2023) decided on 18.09.2023, he shall be satisfied and abide by the order passed by the authority concerned.

9. It is trite law that guarantee of equality of law as enshrined under Article 14 of the Constitution of India, is a positive concept and it can not be enforced in a negative manner and the respondent has rightly relied upon the judgment in the



case of *State of Bihar vs. Upendra Narayan Singh (2009) 5 SCC 65* while negating the claim of the petitioner.

10. Despite the aforesaid position in law as well as on facts only on the ground of parity, as claimed by the petitioner with other identically situated persons, who are said to have been allowed some benefits, this Court only for the ends of justice gives a chance to place his case afresh.

11. Considering the prayer made on behalf of the petitioner, the present writ petition stands disposed of with a liberty to the petitioner to file a fresh representation annexing all the orders on which the petitioner is basing his claim before the Director-in-Chief, who shall again consider the claim of the petitioner in the light of the order(s) referred hereinabove and pass reasoned and speaking order without being prejudiced by the earlier order passed by the Director-in-Chief, which is put to challenge in the present writ petition, preferably within a period of further eight weeks.

12. Accordingly, the writ petition stands disposed of.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.01.2024
Transmission Date	

