

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20344 of 2012

1. Arvind Kumar Yadav S/o Ganesh Yadav, Resident of Village- Shivsagar, Police Station- Tengrahi, District- Darbhanga.
2. Ram Kumar S/o Mahanth Yadav Resident of Village- Kedaliputti, Police Station- Nauhatta, District- Saharsa.
3. Satish Prasad Yadav, S/o Ram Bahadur Yadav Resident of Village- Kiratpur, Police Station- Jamalpur, District- Darbhanga.
4. Sakal Prasad S/o Atilal Yadav Resident of Village- Milkidagh, Police Station- Bahera, District- Darbhanga.
5. Jawahar Lal Yadav S/o Kushumlal Yadav, Resident of Village- Bor, Police Station- Ghanshyampur, District- Darbhanga.
6. Ghooran Ram S/o Rameshwar Ram Resident of Village- Kahua, Police Station- Biraul, District- Darbhanga.
7. Ramdeo Sahani S/o Jhotan Sahani Resident of Village- Kahua, Police Station- Biraul, District- Darbhanga.
8. Pramod Kumar @ Pramod Kumar Yadav S/o Nirash Prasad Yadav Resident of Village- Pansara, Police Station- Ghanshyampur, District- Darbhanga.
9. Md. Fakre Alam S/O Md. Zaheer Alam Resident of village - Pali, Police Station- Ghanshyampur, District- Darbhanga.
10. Tripati Narayan Yadav S/o Vasudeo Yadav Resident of Village- Tarwada, Police Station- Jamalpur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director in Chief, Health Services, Government of Bihar, Patna.
3. The Regional Deputy Director, Health Services, Government of Bihar, Patna.
4. Civil Surgeon- Cum- Chief Medical Officer, Patna.
5. Civil Surgeon- Cum- Chief Medical Officer, Madhepura.
6. Civil Surgeon- Cum- Chief Medical Officer, Aurangabad.
7. Civil Surgeon- Cum- Chief Medical Officer, Begusarai.
8. Civil Surgeon- Cum- Chief Medical Officer, Gopalganj.
9. Civil Surgeon- Cum- Chief Medical Officer, Siwan.
10. Civil Surgeon- Cum- Chief Medical Officer, Saharsa.
11. Civil Surgeon- Cum- Chief Medical Officer, Motihari.
12. District Leprosy Officer, Patna.
13. District Leprosy Officer, Madhepura.
14. District Leprosy Officer, Begusarai.



15. District Leprosy Officer, Aurangabad.
16. District Leprosy Officer, Gopalganj.
17. District Leprosy Officer, Motihari.
18. District Leprosy Officer, Siwan.
19. District Leprosy Officer, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Advocate
Mr. Md. Ghulam Mustafa, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-09-2024

Heard Mr. Jagannath Singh, learned counsel along with Mr. Md. Ghulam Mustafa, learned counsel appearing on behalf of the petitioners and Mr. Abhishek Singh, learned AC to GA-7 appearing on behalf of the respondents.

2. The petitioners in paragraph no. 1 of the present writ petition has sought, *inter alia*, following relief(s), which is reproduced hereinafter:-

“1. For issuance of a writ in the nature of certiorari or any other appropriate writ / order / direction for quashing the letter bearing memo no. 84 (11) dated 08.03.1999 (Annexure-8) issued by Additional Commissioner-cum- Special Secretary, Department of Health, Government of Bihar, Patna and the letters issued by the concerned Civil Surgeon-cum-Chief Medical Officers of Madhepura, Aurangabad, Begusarai, Patna, Gopalganj, Siwan, Motihari and Saharsa to the concerned District Leprosy Officers of the said districts and also the letters issued by the concerned District Leprosy Officers in compliance of the letter bearing memo no. 84 (11) dated 08.03.1999 by which the petitioners were removed from their service.



II. For reinstating the petitioners on their post on Non-Medical Assistant with effect from the date on which they were removed in the light of letter bearing memo no. 84 (11) dated 08.03.1999 (Annexure- 8)

III. For issuing directions to pay the consequential benefits from the date on which the petitioners were removed from their service, including the salaries and other emoluments payable to the petitioners.

IV. For giving the petitioners the same and similar treatment which has been accorded to the petitioners of C.W.J.C. No. 6575 of 2009 (Om Prakash Versus The State of Bihar and others) by its order and other analogous cases vide its order dated 06.10.2009 as also C.W.J.C. No. 9421 of 2009 (Lila Devi Versus The State of Bihar and others) along with its analogous cases by its order dated 12.11.2009 and W.P.S. No. 628 of 2010 (Prem Chandra Tiwary Versus The State of Jharkhand and others) disposed of on 04.05.2010 and the order dated 16.01.2012 passed C.W.J.C. No. 3191 of 2011.

V. For any other relief to which the petitioners are found entitled by this Hon'ble Court.”

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners, who are ten in numbers, have preferred the present writ petition and they are the employees of the Health Department. The petitioners are aggrieved by the action of the State for terminating their services on the ground that their appointment were illegal on the basis of the report submitted by a Five Men Committee, constituted in compliance of the direction of the Court in **LPA No. 946 of 2003 (The State of Bihar and Ors. Vs. Purendra Sulan Kit)**. The report has put the services of the employees in three categories: irregular, illegal and forged. The petitioners, have been put either in illegal or forged category, are



recommended for termination from services. The petitioners have given, in tabular form in paragraph no.5, their date of appointment and place of posting. All of them were appointed on different dates in the year 1987.

4. Learned counsel further submitted that when the termination order affected *en masse* of the employees, being aggrieved by the same, several writ petitions were filed. The matter went up to the Division Bench and considering the grievances of the employees, the Division Bench directed the State Government to constitute a five men committee in the case of **State of Bihar Vs. Purendra Sulan Kit**, reported in **2006 (3) PLJR 386**, to scrutinize their cases. Learned counsel also submitted that by the time, the Apex Court while considering the grievance of the similarly situated employees in the case of **State of Karnataka & Ors. Vs. M.L. Kesari & Ors.**, reported in **(2010) 9 SCC 247**, had framed guidelines to categorize the employees under different categories. The next contention of the petitioners is that the petitioners before getting terminated from services, they were not given any opportunity of hearing. As such, the enquiry report itself call for an interference having evaluated the case of the petitioners without giving any opportunity of hearing. Learned counsel further submitted that a



writ petition bearing **C.W.J.C. No. 3191 of 2011 (Md. Mustaque Ansari and Anr. Vs. The state of Bihar and Ors.)** was filed on behalf of the similarly situated employees and the co-ordinate Bench of this Court vide order dated 16.01.2012 had allowed the writ petition by quashing the communication contained in Memo No.84(II) dated 08.03.1999 and also communication contained in letter dated 03.04.1999. It is admitted fact that the petitioners were also appointed on the post of Non Medical Assistant. On these grounds, the learned counsel seeks that the petitioners be re-instated in the service.

5. *Per contra*, Mr. Abhishek Singh, learned counsel appearing on behalf of the State submitted that the petitioners, being fence sitter, and having not exercised their right, soon after their termination order, can not be granted relief, as being indolent and having not taken any effort for protection of their right. Learned counsel further submitted that it is a settled principle of law in the case of **Jagdish Lal & Ors. Vs. State of Harayana & Ors.** reported in (1997) 6 SCC 538, wherein it has been held that an employee, who kept sleeping over their rights for long and elected to wake up when they had the impetus from from similarly situated employees disentitles him to the discretionary relief granted under Article 226 of the Constitution



of India and in this regard, he has emphatically submitted that the present writ petition is fit to be dismissed on the ground of delay and laches. Learned counsel also submitted that a supplementary counter affidavit has been filed on behalf of the respondent no.2 giving the development which has taken place during the pendency of the writ petition. In the light of the judgment passed by the Apex Court in case of **State of Karnataka & Ors. Vs. Umadevi & Ors., reported in (2006) 4 SCC 1**, which has been clarified by the Hon'ble Supreme Court in **Civil Appeal No.7879 of 2019 (The State of Bihar & Ors. Vs. Devendra Sharma)** in paragraph no.45, had set aside the order passed by this Court in similar circumstances, as the Five Men Committee had found the appointment of the petitioners to be forged and illegal appointment. Learned counsel submitted that the respondents have given sufficient reason for not interfering with the conclusion derived by the Five Men Committee, which is supported by the law laid down by the Apex Court in case of **State of Bihar and Ors. Vs. Kirti Narayan Prasad (Civil Appeal No.8649 of 2018)** and vide order dated 17.10.2019 passed in Civil Appeal No.7879 of 2019, the Apex Court, in paragraph no.46, has dismissed the relief sought for by the candidates and had allowed the appeal filed by



the State vide order dated 24.09.2014. Learned counsel, in these background, submitted that **Civil Appeal No.645 of 2020 (The State of Bihar & Ors. Vs. Md. Mustaque Ansari & Anr.)** was allowed by condoning the delay made in filing LPA by the State and directed the Division Bench of this Court to decide the case on its own merits. The dismissal of LPA for non-prosecution will not entitle the petitioner for any relief, as prayed for in the present writ petition.

6. Having considered the rival submissions made on behalf of the parties and before passing order on merits, I will first answer as to whether the present writ petition is not maintainable merely on ground of delay and laches. It is admitted by the parties that in the case of individual employee, whose appointment were subject matter of several litigation before this Court, a Five Men Committee was constituted for evaluating individual case of the employees and the Committee had categorized three categories of the employees. The petitioners' appointment was found to be on the basis of forged appointment letter. Several writ petitions were filed thereafter and the petitioners also being affected by the order of termination have preferred the present writ petition. The vital right of the petitioners has been affected, as a result of *en-masse*



termination of the employees and the petitioners belong amongst them, I don't find that the writ petition could be dismissed on the ground of delay and laches.

7. The respondents have supported their case on the basis of the law laid down by the Apex Court in the case of **Kirti Narayan Prasad (supra)**, which also relates to the appointment of Class-III and IV employees in Primary Health Centre within the State of Bihar, having fallen under the jurisdiction of the Civil Surgeon. The Apex Court having taken the development and analyzing the finding of the Division Bench and the law laid down by the Apex Court in the case of **Uma Devi (Supra)** and **M. L. Kesari (supra)** had specifically referred to the paragraph nos. 43 and 53 of judgment rendered in the case of **Uma Devi (Supra)**, as well as, paragraph no.7 of **M. L. Kesari (Supra)**, in which Hon'ble Supreme Court has concurred with the finding in the case of **Uma Devi (supra)**. The Apex Court has also gone into the effect of the termination being *ab initio* holding that the employees cannot be held to be civil servant of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or any other disciplinary rules shall not arise and had allowed the Civil Appeal filed by the State.



8. I find that in light of the law laid down by the Apex Court in aforesaid cited judgments, the respondents are at least required to give the finding of the State Committee to the petitioners, as to whether, they were illegally or validly appointed or had secured appointment on the basis of forged appointment letter and had been inducted in Government service by the concerned Civil Surgeon cum Chief Medical Officer by issuing a positive order.

9. In view of the facts discussed hereinabove, I find it proper to direct the Director in Chief, Health Services, Government of Bihar, Patna, to consider the case of the petitioners, who may not be left wandering about their status, by communicating them, if they have obtained their appointment on the basis of forged appointment letter.

10. The writ petition, accordingly, stands disposed of.

11. There shall be no order as to costs.

(Purnendu Singh, J.)

Mantreshwar/-
Ashishsingh

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	19.09.2024
Transmission Date	N.A

