

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.568 of 2018

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1. Syed Mohammad Shafique Ahmed, Son of Sri Syed Mozahir Hassan, resident of Mohalla- Nawadih, P.S.- Aurangabad, District- Auragabad.
 2. Ramesh Choudhary, Son of Sri Manikchand Choudhary, resident of Village and P.O.- Babu Amauna, P.S.- Daudnagar, District- Aurangabad.
 3. Alok Ranjan, Son of Sri Tribhuwan Nath Sinha, resident of Mohalla- Laxman Bigha, P.O. and P.S.- Aurangabad, District- Aurangabad.
 4. Santosh Kumar Pandey, Son of Sri Rajendra Pandey, resident of Village- Gordiha, P.O.- Sansa, P.S.- Daudnagar, District- Aurangabad.
 5. Smt. Sushma Sinha, daughter of Sri T.N. Sinha, resident of GT Road, Aurangabad, District- Aurangabad.
 6. Arvind Kumar Singh, son of Sri Gati Narayan Singh, resident of Village- Dehuli, P.O.- War, P.S.- Madanpur, District- Aurangabad.
 7. Manoj Kumar, Son of Sri Gopal Sharan Gupta, Resident of Mohalla- Sahpur, P.O. and P.S.- Aurangabad, District- Aurangabad.
 8. Sunil Kumar Gupta, Son of Sri Kewal Prasad Gupta, resident of Village- Jamhore, P.O. and P.S.- Jamhore, District- Aurangabad.
 9. Arvind Kumar Singh, Son of Sri Upendra Narayan Singh, resident of Village and P.O.- Sakardas Nawada, P.S.- Wazirganj, District- Aurangabad.
 10. Smt. Jayanti Kumari Sharma, Sir Gopal Sharan Sharma, resident of Jagjivan Road, Gaya, P.S.- Gaya, District- Gaya.
 11. Suresh Prasad Singh, Son of Sri Mahavir Singh, resident of Village- Karmaha, P.O. and P.S.- Aurangabad, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Director-in-chief Administration, Directorate of Health Service, Department of Health, Government of Bihar, Patna
4. The Civil Surgeon-cum-Chief Medical Officer, Aurangabad.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 5685 of 2018

1. Binay Kumar Singh, Son of Ramdeni Singh, Resident of Mohalla-Bal Bihar Road, Right Side Road No.5, Ward No. 12, New Area, Chittor Nagar, Police Station-Aurangabad Town, District-Aurangabad.
2. Dilip Kumar, Son of Late Santan Prasad Singh, Resident of Mohalla- Shahpur, Thakurbari Road, Near Suraj Mandir, Police Station-Town Thana, District-Aurangabad.
3. Md. Islam Uddin, Son of Late Md. Hanif Resident of Mohalla-Dunka Kucha, Behind Khajekalan, District-Patna, 800008.



4. Sudama Prasad Singh, Son of Late Jagdishwar Singh Resident of Mohalla-Dev Road, Bank Colony Amba, Aurangabad.
5. Dilip Kumar Singh, Son of Sri Ram Pravesh Singh, Resident of Mohalla-Ramdiha, Ward No. 32, Anugrah Nagar, near S. Sinha College, Police Station-Town Thana District-Aurangabad.
6. Suresh Ram, Son of Late Bigan Mochi, Resident of Village-Kusapi Tola, Usari, Police Station-Tekari, District-gaya.
7. Baijnath Singh, Son of Late Ram Chandra Singh, Resident of Village-Bhaw Bigha, Police Station-Daudnagar, District-Aurangabad.
8. Kamakhya Narayan Singh, Son of Late Batuk Narayan Singh, Resident of Village-Sarsa, Police Station-Risiup, District-Aurangabad.
9. Kamal Deo Paswan, Son of Late Jai Ram Paswan, Resident of Mohalla-Shahpur, Near R.L.S. College, Ward No. 26, Police Station-Town Thana, District-Aurangabad.
10. Shiv Kumar Ram, Son of Shripati Ram, Resident of Village-Bela, Police Station-Aurangabad Mufassil, District-Aurangabad.
11. Gopal Singh, Son of Late Badri Narayan Singh, Resident of behind Anugrah Middle School, Lakshman Mohalla, Post and PS-Aurangabad, District-Aurangabad.
12. Anil Kumar Verma Son of Late Badri Nath Verma, Resident of Behind Primary School, South of Block Colony, Post and District-Aurangabad.
13. Gopal Saran Singh, Son of Late Gupteshwar Singh, Resident of Village and Post-Ketaki, Police Station-Dev, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director-in Chief, Health Services, Directorate of Health Service, Government of Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical officer, Aurangabad.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 568 of 2018)

For the Petitioner/s : Mr.Akashdeep, Advocate
Mr. Shyameshwar Kr. Singh, Advocate
For the Respondent/s : Mr.S.D.Yadav -AAG9
Mr. Anil Kumar Verma, AC to AAG-9

(In Civil Writ Jurisdiction Case No. 5685 of 2018)

For the Petitioner/s : Mr.Akashdeep, Advocate
Mr. Shyameshwar Kr. Singh, Advocate
For the Respondent/s : Mr.Ramadhar Singh- GP25

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 08-01-2024

Heard learned counsel for the petitioners, learned



counsel for the State.

2. Learned counsel for the petitioners submits that he has filed CWJC No. 568/2018 with a prayer to consider and grant the seniority of petitioners, as has been granted to all other Health Educators appointed from 1992 onwards, from the date of their initial appointment against sanctioned vacant posts of Health Educator and consequentially to place them at the appropriate place in the final seniority list published vide Memo No.462 dated 09.05.2016 strictly in accordance with law.

3. Learned counsel for the petitioners submits that during the pendency of this writ petition, the department has issued an order vide Memo No. 288 dated 06.03.2018 (Annexure 7/1 to CWJC No.5685 of 2018) as well as an order issued vide Memo No. 293 dated 07.03.2018 (Annexure 7/1 to CWJC No. 5685 of 2018) by which a common departmental proceeding has been initiated against the petitioners and others and they have been placed under suspension and, therefore, the petitioners have no option but to file another writ petition bearing CWJC No. 5685 of 2018.

4. For the purpose of complete adjudication, this Court has decided to hear both cases together. In the opinion of this Court, the preliminary question that whether the initiation of



departmental proceedings has been correctly made, has to be decided first. Therefore, this Court directs the parties to argue on the second case first.

5. Learned counsel for the petitioners submits that the question of appointment of petitioners by the Civil Surgeon-cum- the Chief Medical Officer has been raised by the State consistently. According to the circulars, the Director-in-Chief, Health Services, Department of Health, Government of Bihar, is the competent authority to appoint the petitioners and other persons, but the petitioners were admittedly appointed by the Civil Surgeon-cum- the Chief Medical Officer, therefore their appointment is bad in law since very the day of its inception.

6. Learned counsel for the petitioners has put his reliance on Annexure-1, i.e. the order dated 15.04.1991, passed in CWJC No. 3986 of 1990. For the purpose of adjudication, it is necessary to quote the **finding of the learned single Judge in CWJC No. 3986 of 1990 as under:-**

“Accordingly, this writ application is allowed and the respondent, Civil-Surgeon is directed to take steps for appointment of the petitioners in accordance with law on the basis of the selection already made.

With the aforesaid direction, this application is thus disposed of. “



6.1 Learned counsel for the petitioners submits that the writ petitioners of second case have moved before this Hon'ble Court in CWJC No. 8240 of 1991 which was disposed of vide order dated 09.09.1992 as under :-

“When this matter was heard on the last date, i.e. 27.08.1992, we had directed the Civil Surgeon Cum Chief Medical Officer, Aurangabad to appear before this Court to clarify certain points. The Civil Surgeon is present in Court. He has stated before this Court that there are still 20 vacancies in the cadre of Health Educator which will be filled up from the panel (Annexure 3 and 4). These petitioners are at serials 8, 12 and 13, respectively.

2. We have earlier disposed of another writ application directing the Civil Surgeon to appoint the petitioners of that application from the panel. Accordingly, we direct the Civil Surgeon cum Chief Medical Officer, Aurangabad (respondent No.2) to appoint the petitioners on the post of Health Educator from the panel on the basis of their position to the present seniority. Learned Standing Counsel No.1 informs us that the order will be given effect to within two weeks from today. With the above observations and directions, the writ application is disposed of.



Let a copy of this order be handed over to learned Standing Counsel No.1 for communication.”

6.2 Similarly, the petitioners of the aforesaid case have preferred CWJC No. 466 of 1992, which was decided on 19.08.1992, as under :-

“Heard learned counsel for the petitioners and the State.

2. It appears that a panel was prepared in 1980 for filling the posts of Health Educator in which petitioners were included with others. Initially, there were 48 vacancies, but now 21 posts remain to be filled up. It is stated in paragraph 9 of the counter affidavit that the remaining vacancies were to be filled up from the panel (Annexure-4) according to the position of the candidates, included therein.

Accordingly, we direct the respondents to consider the case of the appointment of the petitioners in accordance with law.

With this direction, the application is disposed of.”

7. Learned counsel for the petitioners submits that the validity of the appointment of the petitioners by the Civil Surgeon-cum-the Chief Medical Officer has already been decided in CWJC No. 3986 of 1990 in which there is categorical finding of this Hon’ble Court with reasons. This writ petition



was allowed in favour of the petitioners and respondent Civil Surgeon-cum-the Chief Medical Officer was directed to take steps for appointment of the petitioners in accordance with the law on the basis of the selection already made. Therefore, the counsel for the petitioner submits the said decision which was passed on 15.04.1991 in CWJC No. 3986 of 1990 was not only final for the petitioners rather it acquires finality because the respondent authorities have neither opted to prefer an appeal against the said order nor this order was challenged in any manner and the said order has been implemented in its true spirit.

8. Learned counsel for the petitioners further submits that not only in the case of the petitioners of CWJC No. 568/2018 but also in the case of the petitioners of CWJC No. 5685 of 2018 the same treatment has been made. Therefore the State has no *locus standi* to raise the question of the initial appointment of the petitioners treating to be illegal. As such, issuance of any action by the State treating the initial appointment to be illegal (which was made by virtue of the order passed by this Hon'ble Court is illegal) and, therefore, Memo No. 288 dated 06.03.2018 (Annexure-7 to CWJC No. 5685/2018) and Memo No. 293 dated 07.03.2018 (Annexure-



7/1 to CWJC No. 5685/2018) requires to be quashed.

9. Learned counsel for the petitioners further submits that during the pendency of these two writ petitions, the other persons who were appointed to the post of Health Educator were moved before this Hon'ble Court in CWJC No. 4036 of 2017 which was allowed vide order dated 19.07.2018 and, therefore, the petitioners contend that the case of the petitioners should also be considered for the promotion/grant of seniority in accordance with law.

10. Learned counsel for the State on the other hand vehemently opposes the prayer of the petitioners and submits that it is true that neither the order dated 15.04.1991 passed in CWJC No.3986 of 1990 nor order dated 09.09.1992 passed in CWJC No. 8240 of 1991 and order dated 19.08.1992 passed in CWJC No. 466 of 1992 were challenged before the higher Court and as such, the said orders may acquire finality but truth is that the State of Bihar has issued circular in which appointment on the post of health educators has to be made by the Director-in-Chief, Health Services, Department of Health, Government of Bihar only. Counsel for the State also submits that so far as CWJC No. 4036/2017, as mentioned by counsel for the petitioners is concerned, all those petitioners of the said writ



petition were selected by virtue of circulars whereas the present petitioners have not been appointed by virtue of circulars and as such the promotion /gradation has rightly been granted to the petitioners who were appointed in the light of the circulars whereas the petitioners were not appointed in the light of the circulars, therefore, these two sets of petitioners cannot be equated and parity cannot be granted to the present petitioners.

11. Upon hearing learned counsel for the parties and going through the documents available on record, particularly, the order passed by this Hon'ble Court in CWJC No. 3986 of 1990 dated 15.04.1991, it transpires to this Court that the State officials are still raising the same question which they have raised in CWJC No. 3986/1990 and it was well answered by this Hon'ble Court and in the opinion of this Court, after the said decision dated 15.04.1991, there is absolutely no illegality in the appointment of the petitioners, particularly when the said appointment has been made after direction of this Hon'ble Court.

12. The State respondents have never challenged those points further before any Court, as such, the order passed by this Hon'ble Court in CWJC No. 3986/1991 acquired finality and in this background, the said decision is binding upon the



State and the State has no right to raise the question of legality or illegality so far as the appointment of the petitioners is concerned, particularly when the petitioners had specifically granted protection by the order passed by this Hon'ble Court.

13. This Court is of the clear view that when petitioners were granted protection by the Hon'ble Court's order then again raising the question at the time of granting promotion/preparing gradation about their initial appointment is not correct. As it creates estoppel on the State officials as the said order passed by this Hon'ble Court is binding on the State. Hence, any such action taken by the State against the petitioners relating to their initial appointments is absolutely illegal, and, therefore, the orders contained in Memo No. 288 dated 06.03.2018 (Annexure-7 to CWJC No. 5685/2018 and Annexure-12 of the CWJC No. 568/2018) and Memo No. 293 dated 07.03.2018(Annexure-7/1 to CWJC No. 5685/2018 and Annexure-12 /1 of the CWJC No. 568/2018) are hereby quashed.

14. So far as the question of promotion and grant of preparation of gradation of the petitioners are concerned, the State is directed to take a fresh decision as directed by this Court in CWJC No. 4036 of 2017 decided on 19.07.2018. It is made



clear that the case of the petitioners who were appointed by the Civil Surgeon-cum-the Chief Medical Officer duly approved by this Hon’ble Court and the case of the petitioners of CWJC No. 4036/2017 who were appointed on the basis of the circulars by the Director-in-Chief, Health Services, Department of Health, Government of Bihar shall be treated equally and gradation list/promotion shall be prepared accordingly within 90 days from the date of production of a copy of this order.

15. At the time of passing the order, learned counsel for the petitioners has drawn the attention of this Court towards Annexure-5, page 33 of the CWJC No.568/2018 i.e. Memo No. 962(22) dated 28.10.1992 which is still in existence has been directed to be taken into consideration.

16. With the aforesaid observation and direction, the present writ petition stands disposed of.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	12/01/2024
Transmission Date	NA

