

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15261 of 2009

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1. Shakuntala Kumari W/O Sri Sunder Lal Yadav Vill.- Goriyari, P.S.- Salakhua, Distt.- Saharsa
 2. Rajo Bharti D/O Late Shanker Chaudhary And W/O Sri Bindeshwari Chaudhari Village and P.O. and P.S. - Beldaur, Distt.- Saharsa, Presently Residing In Village, P.O. And P.S.- Simri Bakhtiarpur, Distt.- Saharsa
 3. Savitry Kumari D/O Late Ramji Chaudhary And W/O Sri Sachidanand Chaudhary Vill.- Panchbhira, P.S.- Salakhua, Distt.- Saharsa, Presently Residing In Village and P.O.- Goriyari, P.S.- Salakhua, Distt.- Saharsa, In Village

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department Of Health Services And Family Planning, Government Of Bihar, Patna
2. The Director-In-Chief Department Of Health Services And Family Planning, Government Of Bihar, Patna
3. The Civil Surgeon-Cum-Chief Medical Officer Darbhanga
4. The In-Charge Medical Officer Primary Health Centre, Ghanshyampur, Darbhanga
5. The In-Charge Medical Officer Primary Health Centre, Manigachhi, Darbhanga
6. The In-Charge Medical Officer Primary Health Centre, Keoti, Darbhanga

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14851 of 2009

MOHAN SHARMA S/O Late Janeshwar Singh, R/O Vill-Laruwa, P.S-Makhdumpur, Distt- Jehanabad

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Through Chief Secretary, Govt. Of Bihar Old Secretariat, Patna
2. The Secretary, Health Services, Govt. Of Bihar, Patna
3. The Director-In-Chief, Health Services, Govt. Of Bihar, Patna
4. The Director, Health Services, Govt. Of Bihar, Patna
5. The District Magistrate, Jehanabad
6. The Civil Surgeon, Jehanabad
7. The Civil Surgeon, Gaya



... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15265 of 2009

JATESH CHOUDHARY S/O Late Chandra Shekhar Choudhary R/O Bagha-
col, P.O. Basant Raji, Distt. Godda Jharkhand

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Commissioner-Cum-Secretary Health Deptt., Govt. Of Bihar, New Sec-
retariat Vikash Bhawan, Bailey Road, Patna
3. The Director-In-Chief Health Services, Directorate Of Health Services,
Health Deptt., Govt. Of Bihar, New Secretariat Vikash Bhawan, Bailey
Road, Patna
4. The Director Health Services, Directorate Of Health Services, Health Deptt.,
Govt. Of Bihar, New Secretariat Vikash Bhawan, Bailey Road, Patna
5. The Deputy Director Health Services, Directorate Of Health Services,
Health Deptt., Govt. Of Bihar, New Secretariat Vikash Bhawan, Bailey
Road, Patna
6. The Civil Surgeon-Cum-Chief Medical Officer Patna
7. The Incharge Medical Officer Health Centre, Fatuah, Patna
8. The Incharge Medical Officer Additional Primary Health Centre,
Khushrupur Fatua, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15333 of 2009

RAJ BALLABH PRASAD S/O Late Jib Narayan Prasad R/O Vill-Mankipar,
P.S- Dhanarua, Distt- Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Commissioner Cum Secretary Department Of Health, Government Of
Bihar, Patna
3. The Director In Chief, Health Services, Govt. Of Bihar, Patna
4. The Civil Surgeon Cum Chief Medical Officer, Katihar
5. In-Charge Medical Officer, Manihari, Katihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15382 of 2009



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UMESH PRASAD SINGH S/O Sri Badri Narain Singh R/Ovill Tetarain, P.S.
Dhibra, Distt- Aurangabad

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Principal Secretary, Health Medical Education And Family Welfare
Government Of Bihar, Patna
3. The Director In Chief, Health Services Government Of Bihar, Patna
4. The Civil Surgeon - Cum- Chief Medical Officer Aurangabad
5. The District Leprosy Eradication Officer Aurangabad

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15478 of 2009

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ABDUS SATTAR S/O Md. Rasul Bakhs R/O Vill.- Dhangawn P.S.- Palasi,
Distt.- Araria

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Chief Secretary Bihar, Patna
3. Secretary, Health Deptt., Govt. Of Bihar, Patna
4. Director In-Chief Health Deptt., Govt. Of Bihar, Patna
5. District Magistrate, Araria
6. Civil Surgeon Cum Chief Medical Officer, Araria Distt.- Araria

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15529 of 2009

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GANESH MOHAN YADAV S/O Late Sita Sharan Yadav Vill.- Radhakant,
P.S.- Basopatti, Distt.- Madhubani

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Director-In-Chief Health Services, New Secretariat, Vikash Bhawan,
Patna
3. The Regional Deputy Director Health Services, Darbhanga
4. The Civil Surgeon-Cum-Chief Medical Officer Begusarai
5. Civil Surgeon-Cum-Chief Medical Officer Darbhanga
6. The Incharge Medical Officer Primary Health Centre,Khajauli, Distt.- Mad-



hubani

7. The Incharge Medical Officer Primary Health Centre, Cheriya Barlarpur,
Distt.- Begusarai

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15530 of 2009

RAJ KUMAR SINHA S/O Late Nathuni Prasad Sinha Vill.- Gorgama, P.S.-
Phulpras, Distt.- Madhubani

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Director-In-Chief Department Of Health Services And Family Planning,
Government Of Bihar, Patna
3. The Civil Surgeon-Cum-Chief Medical Officer Madhubani
4. The In-Charge Medical Officer Primary Health Centre, Ghoghardiha, Mad-
hubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15665 of 2009

NAND LAL YADAV S/O Shri Laxman Yadav, R/O Vill- Gotahi, P.O- Atahar,
P.S- Bahadurpur, Distt- Darbhanga

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Through The Principal Secretary, Department Of
Health and Family Welfare, Government Of Bihar, Patna
2. The Director-In-Chief, Health Services, Government Of Bihar, Patna
3. The Regional Dy. Director, Health Services, Darbhanga Division, Distt-
Darbhanga
4. The Civil Suregon-Cum-Chief Medical Officer, Madhubani, Distt- Mad-
hubani
5. The In-Charge Medical Officer, Primary Health Centre, Ladania, Distt-
Madhubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15714 of 2009

MD.MOJIBUR RAHMAN S/O S.K.Sirman Ali, R/O Vill- Masuria, For-
sadangi, P.S- Jokihat, Distt- Araria



... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Chief Secretary, Bihar, Patna
3. Secretary, Health Department, Bihar, Patna
4. Director, Health Department, Government Of Bihar, Patna
5. District Magistrate, Araria, Distt- Araria
6. Civil Surgeon-Cum-Chief Medical Officer, Araria, Distt- Araria, Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15839 of 2009

MD.RAZANOOR S/O Md. Samidur Rahman R/Ovill Bhagwanpur, P.S. Joki-hat, Distt- Araria

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Secretary , Health Department Government Of Bihar, Patna
3. Director , Health Department Bihar, Patna
4. District Magistrate Araria , Distt- Araria
5. Civil Surgeon- Cum- Chief Medical Officer Araria , Distt- Araria

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15876 of 2009

1. SANJAY KUMAR SINHA and ORS S/O Sri Deo Niti Prasad R/O Warsaliganj, P.S.- Warsaliganj, Distt.- Nawada, Presently Residing At Madhusudan Colony, Ghughri Tar, P.S.- Civil Lines, Distt.- Gaya
2. Safdar Ali S/O Gulam Mohammad R/O Vill.- Sadipur, P.S.- Chakand, Distt.- Gaya
3. Gyaneshwar Prakash Sinha S/O Sri Madan Mohan Prasad R/O Vill.- Bardiha, P.S.- Civil Lines, Distt.- Gaya
4. Sheo Kumar Paswan S/O Sri Vishnu Paswan R/O Vill.P.S.- Deshna, Distt.- Nalanda
5. Rajeev Kumar Sinha S/O Madan Mohan Prasad R/O Ghughri Tar, P.S.- Civil Lines, Distt.- Gaya

... .. Petitioner/s

Versus



1. THE STATE OF BIHAR
2. The Secretary, Deptt. Of Health, Govt. Of Bihar, Patna
3. Director-In-Chief, Health Services, Bihar
4. Civil Surgeon-Cum-Chief Medical Officer, Gaya

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15878 of 2009

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1. MD.SALAHUDDIN and ANR S/O Ghulam Sarfuddin R/O Vill.- Bara, P.S.- Chandauti, Distt.- Gaya
2. Hyder Ali S/O Ghulam Mohammad R/O Vill.- Sadipur, P.S.- Chandauti, Distt.- Gaya

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Secretary, Health Services, Govt. Of Bihar, Patna
3. The Director-In-Chief, Health Services, New Secretariat, Patna
4. The State Of Jharkhand Through Its Health Secretary, Ranchi
5. The Civil Surgeon-Cum-Chief Medical Officer, Dhanbad
6. The Incharge Medical Officer, Leporacy Control Unit, Govindpur, Dhanbad

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15926 of 2009

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DEBNARAYAN PRASAD S/O Late Suraj Prasad R/Omoh Suratganj, P.O. Madhubani, P.S. Madhubani, DisttTown Madhubani

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Director - In- Chief , Health Services Govt. Of Bihar, Patna
3. The Civil Surgeon - Cum - Chief Medical Officer Madhubani
4. The Regional Deputy Director , Health Services Darbhanga Division, Darbhanga
5. Incharge Medical Officer, Primary Health Centre Gohardiha, Distt- Madhubani

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15990 of 2009



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1. NAGINA DEVI W/O Sri Atmanand Jha R/O Vill.- Goimishra Lagma, P.O.- Salepur Lagma, P.S.- Ghanshyampur, Distt.- Darbhanga
 2. Atmanand Jha S/O Sri Anirudh Jha R/O Vill.- Goimishra Lagma, P.O.- Salepur Lagma, P.S.- Ghanshyampur, Distt.- Darbhanga

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Director In Chief, Health Services, Govt. Of Bihar, Patna
3. The Regional Deputy Director, Health Services, Darbhanga
4. The Civil Surgeon-Cum-Chief Medical Officer, Madhubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16092 of 2009

1. RABINDRA KUMAR RAMAN S/O Sri Yogendra Kumar, R/O Vill- Chapram, P.O-Biraul, P.S-Madhepur, Distt- Madhubani
2. Shashi Bhushan Prasad Suman S/O Sri Ram Narayan Yadav R/O Vill-Bisanpur, P.O- Kalikapur, P.S-Madhepur, Distt- Madhubani
3. Ram Bilash Yadav S/O Ram Prasad Yadav R/O Vill And P.O- Helhi Via Nirmali Block- Marauna, P.S- Nirmali, Distt- Supaul

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Chief Secretary, Government Of Bihar, Patna
3. The Commissioner Cum Secretary, Health Services Government Of Bihar, Patna
4. The Civil Surgeon Cum Chief Medical Officer, Madhubani
5. The Incharge Medical Officer, Primary Health Centre Ghoghardiha, P.S- Ghoghardiha, Distt- Madhubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16213 of 2009

BECHAN YADAV S/O Sri Mahanth Yadav Vill- Balha, P.O. Balha, P.S. Rajnagar, Distt. Madhubani

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR



- 2. The Director-In-Chief Health Services, Govt. Of Bihar, Patna
- 3. The Regional Deputy Director Health Services, Darbhanga
- 4. The Civil Surgeon-Cum-Chief Medical Officer Madhubani
- 5. The Incharge Medical Officer Primary Health Centre, Lokhi, Distt. Madhubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16227 of 2009

FULDEO KAMAT S/O Sri Jageshwar Kamat, R/O Vill- Bodai, P.S-Lakhnour, Distt- Madhubani

... .. Petitioner/s

Versus

- 1. THE STATE OF BIHAR
- 2. The Chief Secretary Governement Of Bihar, Patna
- 3. The Commissioner-Cum-Secretary, Health Services Government Of Bihar, Patna
- 4. The Civil Surgeon Cum Chief Medical Officer, Madhubani
- 5. The Incharge Medical Officer, Primary Health Centre Ghoghardiha, P.S- Ghoghardiha, Distt- Madhubani

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16443 of 2009

SHASHI BHUSHAN BHARTI S/O Shri Bhola Prasad Vill- Thathari, P.O. Jalsain, P.S. Rudrapur Andhrathadhi, Distt. Madhubani

... .. Petitioner/s

Versus

- 1. THE STATE OF BIHAR
- 2. The Chief Secretary Govt. Of Bihar, Patna
- 3. The Commissioner-Cum-Secretary Health Services, Govt. Of Bihar, Patna
- 4. The Civil Surgeon Cum Chief Medical Officer Madhubani
- 5. The Incharge Medical Officer Primary Health Centre, Ghoghardiha, P.S. Ghoghardiha, Distt. Madhubani

... .. Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 15261 of 2009)
For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate
For the Respondent/s : Mr. Nalin Vilochan Tiwary, AC to GA-9



(In Civil Writ Jurisdiction Case No. 14851 of 2009)
 For the Petitioner/s : Mr. Baxy S.R.P. Sinha, Sr. Advocate
 Mr. Vinod Kumar, Advocate
 For the Respondent/s : Mr. Neetu Jha, AC to GA-12
 (In Civil Writ Jurisdiction Case No. 15265 of 2009)
 For the Petitioner/s : Mr. S.K. Verma, Advocate
 For the Respondent/s : Mr. Manoj Kumar Yadav, AC to GA-10
 (In Civil Writ Jurisdiction Case No. 15333 of 2009)
 For the Petitioner/s : Mr. Rajib Ranjan Jha
 For the Respondent/s : Mr. Aag3
 (In Civil Writ Jurisdiction Case No. 15382 of 2009)
 For the Petitioner/s : Mr. Gajanan Arun, Advocate
 For the Respondent/s : Mr. Vishwambhar Prasad, AC to AAG-5
 (In Civil Writ Jurisdiction Case No. 15478 of 2009)
 For the Petitioner/s : Md. Ziaul Quamar, Advocate
 For the Respondent/s : Mr. Sc9
 (In Civil Writ Jurisdiction Case No. 15529 of 2009)
 For the Petitioner/s : Mr. Saroj Kumar
 For the Respondent/s : Mr. Aag1
 (In Civil Writ Jurisdiction Case No. 15530 of 2009)
 For the Petitioner/s : Mr. Suraj Narain Yadav
 For the Respondent/s : Mr. Gp12
 (In Civil Writ Jurisdiction Case No. 15665 of 2009)
 For the Petitioner/s : Mr. Madhu Prasun, Advocate
 For the Respondent/s : Mr. Ajay Behari Sinha, GA-8
 (In Civil Writ Jurisdiction Case No. 15714 of 2009)
 For the Petitioner/s : Md. Ziaul Quamar, Advocate
 For the Respondent/s : Mr. Dinesh Mahory, AC to AAG-11
 (In Civil Writ Jurisdiction Case No. 15839 of 2009)
 For the Petitioner/s : Md. Ziaul Quamar, Advocate
 For the Respondent/s : Mr. Raghwanand, GA-11
 Mr. Pratik Kumar, AC to GA-11
 (In Civil Writ Jurisdiction Case No. 15876 of 2009)
 For the Petitioner/s : Mr. Vivek Prasad
 For the Respondent/s : Mr. Aag10
 (In Civil Writ Jurisdiction Case No. 15878 of 2009)
 For the Petitioner/s : Ms. Roona, Advocate
 For the Respondent/s : Mr. Aag8
 For the State of Jharkhand: Mr. Maruth Singh, Advocate
 (In Civil Writ Jurisdiction Case No. 15926 of 2009)
 For the Petitioner/s : Mr. Satish Chandra Jha, Advocate
 For the Respondent/s : Mr. Rohitabh Das, AC to AAG-13
 (In Civil Writ Jurisdiction Case No. 15990 of 2009)
 For the Petitioner/s : Mr. Pushpa Rani
 For the Respondent/s : Mr. Gp10
 (In Civil Writ Jurisdiction Case No. 16092 of 2009)
 For the Petitioner/s : Mr. Hriday Narayan Harshit
 For the Respondent/s : Mr. Gp1
 (In Civil Writ Jurisdiction Case No. 16213 of 2009)
 For the Petitioner/s : Mr. Satish Chandra Jha
 For the Respondent/s : Mr. Aag6
 (In Civil Writ Jurisdiction Case No. 16227 of 2009)
 For the Petitioner/s : Mr. Hriday Narayan Harshit, Advocate
 For the Respondent/s : Mr. Dhurjati Kumar Prasad, GP-14
 (In Civil Writ Jurisdiction Case No. 16443 of 2009)
 For the Petitioner/s : Mr. Hriday Narayan Harshit, Advocate
 For the Respondent/s : Mr. Manoj Kumar Ambastha, SC-26



Mr. Subodh Kumar AC to SC-26

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 28-07-2025

4 28-07-2025 Learned Counsel for the petitioners in all the writ petitions and learned Counsel for the State in all the writ petitions are present.

2. It has been jointly submitted that the matter directly and substantially in issue has traveled up to Hon'ble Supreme of India and finally concluded on 17.10.2019 in favour of the State in the case of ***State of Bihar v. Devendra Sharma*** Civil Appeal No.7879 of 2019, arising out of SLP (Civil) No.11885 of 2012, reported in **(2020) 15 SCC 466 :2019 INSC 1157**. In the said judgment it has been observed in paragraphs 29 to 46 which states as follows:-

“29. On the basis of the abovesaid circulars and the government orders, it is argued that the appointing authority of Class III and Class IV posts is Director, Health Services. However, there was some delegation in respect of certain other administrative matters but there was no delegation in respect of appointment against Class III and Class IV category posts. The powers conferred on Assistant Director in terms of Clause 13(c) of Chapter I of the Bihar Health Manual empowers Assistant Direc-



tor (Public Health) to appoint non-gazetted epidemic staff like Health Assistants and Vaccinators against sanctioned posts but only in case of emergency. A finding has been recorded in Ashwani Kumar [Ashwani Kumar v. State of Bihar, (1997) 2 SCC 1 : 1997 SCC (L&S) 267] that 2250 posts were sanctioned whereas 6000 appointments were made. The tuberculosis eradication under the 20-Point Programme was not an emergency activity which may empower the Assistant Director to make large number of appointments but again such emergent powers could be exercised only in respect of sanctioned posts.

30. *The exception in respect of appointing authority came with the Circular dated 3-12-1980 which contemplated that suitable candidates be selected as per requirement from common merit list by the competent authorities of Secretariat and attached offices; District Collector and equivalent officer in charge of the divisional offices. Dr Mallick, Deputy Director in the subordinate offices of the Directorate of Health Services was not competent to make appointments against Category III or Category IV posts in view of the provisions of the Manual as also in terms of the Circular dated 3-12-1980 recorded by this Court in Ashwani Kumar [Ashwani Kumar v. State of Bihar, (1997) 2 SCC 1 :*



1997 SCC (L&S) 267] as well.

31. *Though, certain appointments have been made by the Civil Surgeon which Mr Mukherjee does not dispute as he was the competent authority but it is argued that none of the requirements to fill up the public post was adhered to. Appointments were made to the public posts without following any procedure and without there being any sanctioned post.*

32. *An argument was raised on behalf of the learned counsel for the employees that some of the appointments have been made by Regional Deputy Director as four posts of Assistant Director were converted into that of Regional Deputy Director. We do not find any merit in the said argument. The post of Assistant Director was provided in the Directorate of Health Services with no delegation of appointment except in the case of emergency against sanctioned posts. Such Regional Deputy Director has not been conferred power of appointment against Class III and Class IV posts. Therefore, the Assistant Director was incompetent to make appointments against the sanctioned posts except in emergent cases and so is Regional Deputy Director.*

33. *In Ashwani Kumar [Ashwani Kumar v. State of Bihar, (1997) 2 SCC 1 : 1997 SCC (L&S) 267] , this Court has dealt with the ap-*



pointments made against Class III and IV category posts in the Health Department itself. The reasoning recorded therein is that the appointments have been proved to be made not against the sanctioned posts and in a manner, which is wholly arbitrary, capricious and, therefore, employees will not get any right to seek regularisation of their services.

34. *In civil appeal 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 [Ashwani Kumar v. State of Bihar, (1997) 2 SCC 1 : 1997 SCC (L&S) 267] . 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 [Ashwani Kumar v. State of Bihar, (1997) 2 SCC 1 : 1997 SCC (L&S) 267] . Therefore, no right will accrue 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 [Rita Mishra v. Director, Primary Education, 1987 SCC OnLine Pat 159 : AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701] 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.*

37. *Such judgment of the Full Bench was approved by the three-Judge Bench of this*



Court in R. Vishwanatha Pillai v. State of Kerala [R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105 : 2004 SCC (L&S) 350] . This Court held as under: (SCC p. 116, paras 17-18)

“17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education [Rita Mishra v. Director, Primary Education, 1987 SCC OnLine Pat 159 : AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (SCC OnLine Pat para 13: AIR p. 32, para 13)

‘13. It is manifest from the above that 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. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.’

18. We agree with the view taken by the Patna



High Court in the aforesaid cases.”

38. *The appointments made have been examined by five-member Committee. 91 candidates have been found to be a case of irregular appointment. Such candidates are continuing in service. None of the candidates in the present set of appeals could point out that they were appointed in a manner meant for filling up of vacant post of public appointment i.e. by advertisement and by giving opportunity to all eligible candidates to apply.*

39. *This Court in State of Jharkhand v. Manshu Kumbhkar [State of Jharkhand v. Manshu Kumbhkar, (2007) 8 SCC 249 : (2007) 2 SCC (L&S) 878] , while allowing of the appeal of the State found that the respondent was not sponsored by the employment exchange. There was no advertisement and there was not even any properly constituted committee to make the selection.*

40. *This Court in State of Bihar v. Upendra Narayan Singh [State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] allowed the appeal of the State and that Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts a duty on the employer in every es-*



tablishment in public sector in the State or a part thereof to notify every vacancy to the employment exchange before filling up the same.

41. *This Court in Union of India v. Raghuwar Pal Singh [Union of India v. Raghuwar Pal Singh, (2018) 15 SCC 463 : (2018) 2 SCC (L&S) 823] was examining a case, where the appointment letter came to be issued without approval of the competent authority, then whether such appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services. This Court held that in absence of prior approval of the competent authority, the Director In-charge could not have hastened issuance of the appointment letter. The act of commission and omission of the Director In-charge would, therefore, suffer from the vice of lack of authority and nullity in law.*

42. *In Nidhi Kaim v. State of M.P. [Nidhi Kaim v. State of M.P., (2017) 4 SCC 1 : 8 SCEC 377] , a three-Judge Bench was dealing with admission of students to MBBS course on the basis of illegal and unfair admission process. The Court held as under: (SCC pp. 64-65 & 70, paras 92,*



94 & 108)

"92. ... Having given our thoughtful consideration to the above submission, we are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of "the unfair". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course.

94. ... Even in situations where a juvenile in-



dulges in crime, he has to face trial, and is subjected to the postulated statutory consequences. Law, has consequences. And the consequences of law brook no exception. The appellants in this case, irrespective of their age, were conscious of the regular process of admission. They breached the same by devious means. They must therefore, suffer the consequences of their actions. It is not the first time that admissions obtained by deceitful means would be cancelled. This Court has consistently annulled academic gains arising out of wrongful admissions. Acceptance of the prayer made by the appellants on the parameter suggested by them would result in overlooking the large number of judgments on the point. Adoption of a different course, for the appellants, would trivialise the declared legal position. Reference in this behalf may be made to the judgments relied upon by the learned counsel representing Vyapam.

108. ... In the facts and circumstances of the case in hand, it would not be proper to legitimise the admission of the appellants to the MBBS course in exercise of the jurisdiction vested in this Court under Article 142 of the Constitution. We, therefore, hereby decline the



above prayer made on behalf of the appellants.”

43. *In another three-Judge Bench judgment in Food Corpn. of India v. Jagdish Balaram Bahira [Food Corpn. of India v. Jagdish Balaram Bahira, (2017) 8 SCC 670 : (2017) 2 SCC (L&S) 708] , the Court was examining the consequences of false caste certificate produced to seek appointment. The Court held as under: (SCC pp. 731-32, para 69)*

“69. For these reasons, we hold and declare that:

69.3. The decisions of this Court in R. Vishwanatha Pillai [R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105 : 2004 SCC (L&S) 350] and in Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] which were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual—such as an appointment to a post or admission to an educational institution—on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be,



the admission being rendered void or non est.

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;"

44. *In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of the Supreme Court judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were back door entries, an act of nepotism and favouritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process.*

45. *In light of the above discussion, we find that the order dated 12-7-2011 [State of Bihar v. De-*



vendra Sharma, 2011 SCC OnLine Pat 1580] or other similar orders passed by the High Court cannot be sustained in law and, thus, are set aside. The appeals filed by the State are allowed.

46. *We do not find any error in the order of the High Court dated 24-9-2014 [State of Bihar v. P.S. Dhaka, 2014 SCC OnLine Pat 2636] , and, therefore, the appeals filed by the candidates against such order are dismissed. The pending applications, if any, shall stand disposed of.”*

3. All the matters are relating to appointment of the petitioners at Class-III and Class-IV post in health Services, Government of Bihar.

4. In the light of the discussions made by the Hon’ble Supreme Court of India in the case of **State of Bihar & Others Vs. Devendra Sharma** (Supra), this Court is of the firm view that all the writ petitions have become infructuous and, hence, all the writ petitions are dismissed as infructuous.

(Dr. Anshuman, J)

Mkr./-

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