

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23568 of 2012

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Rudal Manjhi Son Of Late Shobha Manjhi Resident Of Village- Done Khurd
Dhondhya Tola, P.O.- Done, P.S.- Darauli, District- Siwan

... .. 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, Government of Bihar, Patna
4. The District Magistrate, Siwan
5. The Civil Surgeon-Cum-Chief Medical Officer, Siwan
6. The In-Charge Medical Officer, Primary Health Centre, Darauli, District-Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Mishra, Advocate
		Md. Nurul Hoda, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar, A.C. to AAG 4

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 15-10-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for quashing the judgment dated 20.7.2011 passed by the One



Man Inquiry Committee of Hon'ble Mr Justice Uday Sinha in Case no.218 of 2010 (arising out of LPA no. 694 of 2010) wherein it was held that the appointment of the petitioner was illegal and the order of termination was valid. Further prayer has been made for quashing the order of termination contained in memo no. 227 dated 11.3.2005 issued on the orders of the District Magistrate, Siwan under the signature of Civil Surgeon-cum-Chief Medical Officer, Siwan.

3. The case of the petitioner in brief is that he belongs to the Scheduled Caste category and is a holder of a valid driving license bearing no. 1769/85 which has been renewed from time to time. Pursuant to an advertisement put up on the notice board in the office of the Civil Surgeon-cum-Chief Medical Officer, Siwan (respondent no.5), the petitioner applied for appointment and by order dated 19.8.1989 was appointed on a temporary basis on the sanctioned and vacant post of a Jeep driver. The appointment had taken place as a result of a driving test and interview by a Selection Committee and the petitioner was posted at Primary Health Centre, Hussainganj, Siwan.

4. The respondents came out with an order dated 11.3.2005 terminating the petitioner with immediate effect which was challenged by filing CWJC no. 4920 of 2005. The



writ application filed by the petitioner was disposed of by order dated 26.6.2006 in a batch of 820 writ applications being **LPA no. 946 of 2003 and others (State of Bihar versus Purendra Sulan Kit); 2006 (3) PLJR 386** directing the respondent authorities of the Health Department, Government of Bihar to reconsider the case of all the affected employees in view of the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka versus Uma Devi [2006 (2) PLJR (SC) 363]** as to which of the employees are fit for regularization in terms of paragraph no. 44 of the said judgment.

5. The matter was considered by a 5 Member Committee which in its inquiry report dated 10.9.2007 opined with respect to the case of the petitioner at serial no. 215 that the petitioner's appointment is illegal on the ground that he has been regularised from daily wages in 1989 without following the procedure.

6. The petitioner challenged the order of termination on the basis of a report submitted by the 5 Man Committee by filing CWJC no. 5044 of 2008 which was heard with the batch of cases being **CWJC no.6575 of 2009 and analogous cases (Om Prakash versus the State of Bihar)**. By judgment dated 6.10.2009 (Annexure-22) the learned Single



Judge was pleased to quash the order of termination and ordered for reinstatement of the petitioner on the post that he was working with all consequential benefits.

7. The State of Bihar preferred an appeal being **State of Bihar versus Sohan Roy [2010 (2) PLJR 397]** which along with a batch of cases was disposed of by a common judgment dated 11.2.2010 constituting a One Man Committee of Hon'ble Mr. Justice Uday Sinha, a retired Judge of this Court to recommend the various facets of nature of appointments given to the writ petitioners with a view to adjudicate the legality of their appointments and continuance in service.

8. The State of Bihar preferred LPA no. 694 of 2010 in the case of the petitioner herein and the same was disposed of in terms of the Division Bench judgment in the case of State of Bihar versus Sohan Roy (supra). It was pursuant thereto that the one man inquiry committee having heard the petitioner and the respondents passed the judgment dated 20.7.2011 holding the appointment of the petitioner to be illegal and the order of his termination to be valid. It is against this order as also the order of termination dated 11.3.2005 that the present application has been filed.

9. It is submitted by learned counsel for the



petitioner that the petitioner was appointed pursuant to an application filed by him in response to an advertisement displayed on the notice board in the office of the Civil Surgeon-cum- Chief Medical Officer, Siwan. It was submitted in reference to the orders brought on record as Annexure-28 series that the LPAs filed by the State in several cases have been dismissed after the matters had been remanded by the Hon'ble Supreme Court. Referring to paragraph no. 8(j) in the case of State of Bihar versus Sohan Roy (supra) it is submitted that liberty had been granted by this Court to demonstrate before the one man committee that the petitioner's case was similar to those persons who had been retained or reinstated in service, however, the learned Committee did not take the same into consideration. It was further submitted that the so called 5 man committee report was not even signed by all the 5 members and by order dated 20.9.2007 (Annexure-21) ninety one persons had been regularised.

10. In response, it was submitted by learned counsel for the respondents that so far as the petitioner is concerned, it is clear from the records of the case that there was no advertisement at the time of his appointment, no selection committee was constituted, no roster was followed nor did the



so called appointment take place following any rules. It was submitted that it is for this reason that no notice alleged to have been put up on the board in the office of the Civil Surgeon-cum-Chief Medical Officer has been brought on record. Further in reference to the initial order of appointment it is submitted that the same was pursuant to an application filed by the petitioner, a procedure not known to law. The appointment not having been done on the recommendation of a Selection Committee and being contrary to the Rules contained in Circular no. 16441 dated 3.12.1980 the process to weed out illegal appointments was initiated pursuant to the order dated 19.6.1999 of the Chief Secretary ie before the petitioner had completed 10 years of service. In view of these facts together with the so called appointment of the petitioner being purely temporary, the petitioner was terminated vide order dated 11.3.2005.

11. It was further submitted by learned counsel for the respondents that though the order of termination of the petitioner was set aside by this Court by order dated 6.10.2009 (Annexure-2) passed in CWJC no. 6575 of 2009 and analogous cases, however, the said order of the learned Single Judge was nullified by the Division Bench of this Court in State of Bihar versus Sohan Roy (supra). LPA no. 694 of 2010 preferred by



State of Bihar in the case of the petitioner was also disposed of in terms of State of Bihar versus Sohan Roy (supra).

12. Learned counsel for the respondents further submitted that as directed by the Division Bench in State of Bihar versus Sohan Roy (supra) the petitioner as also the respondents appeared before the one man committee of Hon'ble Mr. Justice Uday Sinha who having considered the case of the parties, by his judgment dated 20.7.2011 was pleased to hold the appointment of the petitioner to be illegal and further held the termination to be valid. It is thus submitted by learned counsel for the respondents that there being no dispute with respect to the facts that there was no advertisement at the time of appointment of the petitioner, no evidence of any notice having been put up on the notice board in the office of the Civil Surgeon, no selection committee having been constituted for the process of selection, neither any roster nor any rules having been followed, the order of termination of the petitioner is clearly not valid. There is no illegality in the order impugned and thus the instant application be dismissed.

13. Heard learned counsel for the petitioner and learned counsel for the State of Bihar. Perused the material on record.



14. The facts in brief as per the petitioner's case are that pursuant to an advertisement displayed on the notice board in the office of the Civil Surgeon-cum-Chief Medical Officer the petitioner applied for appointment on the post of Jeep driver and after a driving test and interview having been conducted by a Selection Committee, he was selected on the sanctioned and vacant post of Jeep driver vide order no. 1932 dated 19.8.1989 issued under the signature of the Civil Surgeon-cum-Chief Medical Officer, Siwan.

15. It would be relevant to observe here itself that perusal of the said order/letter would show that it neither talks of any advertisement nor any notice having been put up on the notice board nor any process of selection having been carried out but only mentions about the appointment having been made on a purely temporary basis on an application having been filed by the petitioner. It further states that the appointment/service which is purely temporary may be brought to an end anytime without any prior notice.

16. It further transpires that pursuant to an order dated 19.6.1999 of the Chief Secretary the respondents having taken up the initiative to weed out illegal appointments, on the orders of the District Magistrate, finding the appointment of the



petitioner to be irregular on the ground that no advertisement had been published, no roster clearance had been followed and that pursuant to the order contained in letter 1.1.1986 of the Personnel and Administrative Reforms Department, Government of Bihar, the appointment on daily wages could not have been made, the petitioner was terminated vide order dated 11.3.2005 (Annexure-14) passed by the Civil Surgeon-cum-Chief Medical Officer, Siwan on the orders of the District Magistrate.

17. The said order of termination was challenged by the petitioner by filing CWJC no. 4920 of 2005 which was allowed by a Division Bench of this Court by judgment dated 26.6.2006 in **State of Bihar and others versus Purandara Sulan Kit (supra)**. The relevant paragraph nos. 10, 11 and 12 of the judgment are reproduced herein below for ready reference:-

“10. All the Letters Patent Appeals whether preferred by the State or by affected employees and all the Writ Petitions preferred by the affected employees are hereby disposed of by this common judgment and order with a direction to the authorities of the Health Department, Government of Bihar to reconsider the cases of all the affected employees with a view to find out on the basis of relevant facts and law as settled by the Constitution Bench in the case of



Secretary, State of Karnataka vs. Uma Devi (supra) as to which of such affected employees are fit for regularisation in terms of that judgment, particularly in terms of paragraph 44 of the judgment. Such exercise should be completed within a period of six months from today. If for any good reason, the time period is required to be extended then the respondent State must file an application for that purpose and seek extension from this Court. Till the process is completed, the State of Bihar and its authorities shall maintain status quo in respect of services of the affected employees as existing on date. The status quo shall get revised by the orders that may be passed by the authorities in respect of affected employees as a result of the exercise to be undertaken by them and their final decision in the light of this judgment and order.

11. Before parting with this judgment and order, it is considered relevant to observe that recently a writ petition bearing CWJC No. 3349 of 2000 (Yogendra Singh & Ors. vs. The State of Bihar & Ors.) was disposed of by judgment dated 9.5.2006 rendered by one of us, Shiva Kirti Singh, J. in which reliance was placed upon the aforesaid Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka vs. Uma Devi for directing the State Government to consider the cases of petitioners of that case for regularisation as a one time



measure, if their cases meet the requirements laid down in the aforesaid judgment. As observed in that judgment, here also it is clarified that the authorities of Health Department, Government of Bihar while considering the cases of affected employees in these cases, may consider and take decision as per law in respect of similarly situated other employees of the Department, if any, and for that category of similar situated employees, the Department may issue public notice etc. if it is so advised. But they must be conscious of the judgment of the Apex Court, as noticed above, that the exercise of regularisation is only a one time measure for the whole Department and no such further exercise will be permissible after the one time measure is resorted to and completed within a reasonable period. Thereafter, the vacancies must be filled up as per requirement of the Department in regular manner as per direction of the Apex Court.

12. All the matters shall stand disposed of. There shall be no order as to costs.”

18. Pursuant to the direction of this Court the case of the petitioner was examined by a committee of the respondents who came to the conclusion that the appointment of the petitioner is illegal, the regularisation from daily wages in



1989 having been done without following the procedure. It would also be relevant to mention that the aforesaid Division Bench judgment dated 26.6.2006 (Annexure-16) in LPA no. 946 of 2003 and analogous cases which also disposed of the writ application filed by the petitioner directing the State Government to consider the case of the petitioners for regularisation as a one time measure was not challenged by the petitioner in any appeal and attained finality. By this judgment while the order of termination of the petitioner(s) were not set aside, the respondents were directed and required to consider as to whether the case of the petitioner(s) was fit for regularisation in terms of the judgment of the Hon'ble Supreme Court in the case of Secretary versus State of Karnataka versus Uma Devi (supra). The respondents examined the case of the petitioner and the Committee constituted came to the conclusion that on account of regularisation from daily wage in 1989 without following the procedure the appointment of the petitioner was illegal.

19. The petitioner challenged the said order of the 5 Men Committee in CWJC no. 5044 of 2008 which came to be allowed by judgment dated 6.10.2009 (Annexure-22) in CWJC no. 6575 of 2009 and analogous cases whereby the learned



Single Judge quashed the termination orders directing for reinstatement of the petitioner and others with effect from the date of their termination with all consequential benefits.

20. A number of appeals were preferred by the State of Bihar, LPA no. 694 of 2010 being in the case of the petitioner herein. The batch of cases were disposed of vide order dated 11.2.2010 passed in **State of Bihar versus Sohan Roy**(supra). Relevant part of the judgment is reproduced herein below for ready reference:-

“7.....When debate was on, certain suggestions and counter suggestions cropped up and eventually a consensus was arrived at, which we also find it to be appropriate, apposite and apt in existing factual matrix.

8. Regard being had to the concession given by Mr. P.K. Shahi, learned Advocate General after obtaining instructions from the competent authorities of the State and the concession given by the learned counsel for the respondents- writ petitioners, we proceed to record the terms and conditions which would form spine of the present order. The terms and conditions in seriatim are as follows:-
(a) The directions contained in the order passed by the learned Single Judge against



which the present appeals are preferred would stand nullified.

(b) A one man committee of Hon'ble Mr. Justice Uday Sinha, a retired Judge of this Court shall look into the various facets of nature of appointments that were given to the writ petitioners with a view to adjudicate the legality of their appointments and continuance in service.

.....
*(j) It would also be open to the employee-writ petitioners to demonstrate and establish before the said one man committee that his/her case is similar to those of the persons who have been retained and/or reinstated in service in the wake of the report of the screening committee headed by the Director-in-Chief of Health Department constituted in terms of the earlier directions of this court in the order dated 26.6.2006 in L.P.A. No. of 946 of 2003 (**State of Bihar vs. Purendra Sulan Kit**) and its analogous cases, reported in 2006(3) PLJR 386.*

.....
9. The appeals are accordingly disposed of on the aforesaid agreed terms."

21. So far as the appeal (**LPA no. 694 of 2010**) filed by the State of Bihar in the case of petitioner herein is concerned, the same was disposed of by order 16.4.2010 in the



following terms:

“Admit.

As all the parties have been represented, no further notice need be issued.

On consent of learned counsel for the parties, the appeal is finally heard.

It is submitted at the Bar that the controversies raised in the present appeal are covered by the decision rendered in L.P.A. No. 1623 of 2009 and other connected matter decided on 11.2.2010.

Recording such concession the appeal stands disposed of. There shall be no order as to costs.

A free copy of the order be handed over to Mr. A.K.Chongdar, learned counsel for the State to communicate it to the Chairman of the Committee.”

22. Thereafter as directed by this Court the petitioner approached the one man committee of Hon’ble Mr Justice Uday Sinha who having considered the case of the parties was pleased to decide the same by judgment dated 20.7.2011 in Case no. 218 of 2010 (Rudal Manjhi versus State of Bihar and others).

23. A bare perusal of the order would show that the learned Committee took note of the facts that the appointment of the petitioner did not have support of any selection committee



recommendation, the rules of appointment contained in circular no.16441 dated 3.12.1980 had not been followed, steps had been taken by the respondents to weed out the illegal appointees prior to the petitioner having completed 10 years in service and the letter of appointment of the petitioner clearly spelt out that his appointment was purely adhoc. The committee was of the opinion that for all these reasons the appointment could not be termed as irregular but must be held to be illegal and the petitioner could not be given the benefit of the directions of the Hon'ble Supreme Court in the case of State of Karnataka versus Uma Devi (supra).

24. Besides the above, the Committee of Hon'ble Mr. Justice Uday Sinha also referred to and relied upon the judgments of the order of Supreme Court in the case of **Md. Asif versus State of Bihar [(2010) 5 SCC 475]** and **State of U.P. versus Desh Raj [(2007) 1 SCC 257]**.

25. So far as the case of the petitioner herein is concerned, from the letter of appointment or first engagement of the petitioner on 19.8.1989 (Annexure-4) it would clearly be evident that the same had been made pursuant to an application filed by the petitioner. The letter does not speak of any advertisement nor any process of selection having been carried



out pursuant to which the said appointment had been made. It is for this reason that the letter clearly states that the appointment is purely temporary and the same can be brought to an end at anytime without any notice.

26. It would further transpire that stating the aforesaid shortcomings/illegalities of there being no advertisement, no roster clearance and the directions contained in the letter dated 1.1.1986 of the Personnel and Administrative Reforms Department that no further appointment on daily wage can be made not having been followed the respondents came out with an order dated 11.3.2005 terminating the petitioner from service.

27. On the order of termination having been challenged by the petitioner in CWJC no.4920 of 2005 the same came to be decided in a batch of cases by order dated 26.6.2006 (Annexure-16) in State of Bihar versus Purendra Sulan Kit (supra). This judgment of the learned Division Bench did not did not set aside the order of termination of the petitioner but only disposed of the cases/letters patent appeals/writ petitions with the directions to the respondent Health Department to consider whether the case of the affected employees (including that of the petitioner herein) was fit for regularisation in terms



of the judgment of the Hon'ble Supreme Court in State of Karnataka versus Uma Devi (supra).

28. The Committee of the respondents found the appointment of the petitioner to be illegal for good reasons. Though the order of the Committee was set aside by the learned Single Judge in a batch of cases by judgment dated 6.10.2009 (Annexure-22) in paragraph no.8 of the appeal preferred in the case of State of Bihar versus Sohan Roy (supra) the learned Division Bench of this Court held that the order passed by the learned Single Judge would stand nullified. The LPA 694 of 2010 preferred by the State of Bihar in the case of the petitioner also stood disposed of in terms of the aforesaid judgment in State of Bihar versus Sohan Roy (supra).

29. From the facts stated as also the discussions made herein above it would clearly be evident that so far as the order of termination of the petitioner is concerned, the same was not interfered with by this Court and only a direction was given to the respondents to examine as to whether the case of the petitioner was fit for regularisation in terms of the judgment in the case of State of Karnataka versus Uma Devi (supra).

30. At this stage, it would be relevant to consider the two judgments of the Hon'ble Supreme Court in the case of



a State of U.P. versus Desh Raj (supra) and Md. Ashif versus State of Bihar (supra) referred to by the one man committee in the judgment impugned.

31. In the case of **State of U.P. versus Desh Raj** (supra) the Hon'ble Supreme Court held as follows:

“10. The observations made in the said paragraph must be read in the light of the observations made in paras 15 and 16 of the judgment. The Constitution Bench referred to the decisions of this Court in State of Mysore v. S.V. Narayanappa², R.N. Nanjundappa v. T. Thimmiah³ and B.N. Nagarajan v. State of Karnataka. B.N. Nagarajan is a decision rendered by a three-Judge Bench of this Court in which it has clearly been held that the regularisation does not mean permanence. A distinction has clearly been made in those decisions between "irregularity" and "illegality". An appointment which was made throwing all constitutional obligations and statutory rules to the winds would render the same illegal whereas irregularity presupposes substantial compliance with the rules.

11. Distinction between irregularity and illegality is explicit. It has been so pointed out in National Fertilizers Ltd. v. Somvir Singh in the following terms: (SCC pp. 500-01, paras 23-25)

"23. The contention of the learned



counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in *State of Mysore v. S.V. Narayanappa*², *R.N. Nanjundappa v. T. Thimmiah*³ and *B.N. Nagarajan v. State of Karnataka* wherein this Court observed: [*Umadevi* (3) case¹, SCC p. 24, para16]

'16. In *B.N. Nagarajan v. State of Karnataka* this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only



such defects as are attributable to methodology followed in making the appointments.'

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."
(Emphasis supplied)

32. In the case of **Md. Asif versus State of Bihar**

(supra) the Hon'ble Supreme Court held as follows:

"9. The law regarding regularisation of employees was on a comprehensive review authoritatively declared by a Constitution Bench of this Court in State of Karnataka v. Umadevi (3)⁶. This Court in that case drew a distinction between an irregularity and an illegality in the making of an appointment and declared that where the due process of appointment has been deviated from, the Court can regularise the same. In cases where the process itself is completely violative of the constitutional scheme underlying public employment and no procedure has been followed while granting such appointments the Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued. Relying upon the decision of this Court in Ashwani Kumar case³



this Court in Umadevi (3) case⁶ observed: (SCC pp. 36-37, para43)

"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 by passing of the constitutional and statutory mandates."

(Emphasis supplied)

33. Having heard learned counsels for the parties, in the facts and circumstances stated herein above, the appointment of the petitioner having been made without advertisement, without any selection committee constituted and no roster nor any Rules having been followed, the petitioner was rightly terminated from service also for the reason that from the letter of appointment of the petitioner it is clear that his engagement was purely temporary/adhoc in nature.

34. In the facts of the case the Court finds no illegality in the order impugned and no merit in the case of the writ petitioner.



35. The application is dismissed.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	2.9.2025
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