

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12084 of 2021

- 1.1. Manisha Kumari, W/o of late Jitendra Singh, Son of late Kamla Kumari, Resident of Village- Jagdev Nagar, Nooranganj, Sasaram Rohtas, Bihar- 821115.
- 1.2. Nanendra Singh, Son of late Kamla Kumari, Resident of Village- Jagdev Nagar, Nooranganj, Sasaram Rohtas, Bihar- 821115.
- 1.3. Anil Kumar Son of late Kamla Kumari, Resident of Village- Jagdev Nagar, Nooranganj, Sasaram Rohtas, Bihar- 821115.
- 1.4. Sunita Kumari, D/o of late Kamla Kumari, Resident of Village- Jagdev Nagar, Nooranganj, Sasaram Rohtas, Bihar- 821115.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Director in Chief Health Services Department of Health, Government of Bihar, Patna.
3. The Regional Director Health Service Patna Division, Patna.
4. The Civil Surgeon-cum- Chief Medical Officer Rohtas at Sasaram.
5. The In-Charge Medical Officer Primary Health Centre, Shiv Sagar, Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi, Adv.
Ms. Perna Anand, Adv.

For the Respondent/s : Ms. S. D. Yadav, AAG 9 with
Mr. Anil Kumar Verma, AC to AAG 9

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 01-05-2025

Heard Ms. Vagisha Pragya Vacaknavi, learned
Advocate for the petitioners and Mr. Anil Kumar Verma, learned
Advocate for the State.

2. Before narrating the facts of the case, it would be worth mentioning that during the pendency of the writ petition the sole petitioner died on 11.04.2024 leaving behind her legal heirs, whose names were arrayed in the cause title of the writ



petition pursuant to the order of this Court dated 27.08.2024, passed on interlocutory application bearing I.A. No. 1 of 2024. For convenient, the original petitioner shall be referred petitioner herein.

3. The petitioner was duly appointed on the post of ANM on 30.05.1986 and posted at Primary Health Centre, Chenari, District Rohtas. After serving for about 34 years, the petitioner superannuated on 30.04.2020 from the office of the Primary Health Centre, Shiv Nagar, Sasaram. Notwithstanding, her superannuation in the year 2020, when she has not been allowed her post retiral benefits, she approached this Court by filing the present writ petition seeking a direction upon the respondents to extend all the retiral benefits and other dues, including the arrears of salary for few months.

4. Learned Advocate for the petitioners, after taking this Court through various averments and the Annexures, has submitted that while the petitioner was discharging her duty as ANM, in the meanwhile, in the year 1988, a complaint was filed against the petitioner suspecting her matriculation certificate to be fake and fabricated leading to institution of Chenari P.S. Case No. 68 of 1988 (GR Case No. 1755/1988), registered for the offences punishable under Sections 420, 467, 468 and 479 of the



Indian Penal Code. In the premise of the allegation levelled in the complaint, the matter was verified through the Bihar School Examination Board (for short “the Board”) at the level of the Joint Secretary (Vigilance). Fortifying the genuineness of the certificate, a report was submitted and the same has been found to be genuine. In the meantime, in the judicial proceeding, the learned jurisdictional court, on being found no evidence collected during the course of investigation, discharged the petitioner vide order dated 20.02.1991. The petitioner has further been allowed to resume her duty by an order issued by the Civil Surgeon-cum-Chief Medical Officer as contained in Memo No. 2049 dated 03.08.1991 and since then the petitioner had been discharging her duty on the post of ANM uninterruptedly and she was allowed to superannuate unconditionally without there being any objection on 30.04.2020.

5. Ms. Vagisha, learned Advocate for the petitioner strenuously argued that admittedly at no point of time the petitioner was put to any departmental proceeding, much less any enquiry on being satisfied with the report of the Joint Secretary (Vigilance) of the Board fortifying the genuineness of the matriculation certificate of the petitioner, however, all of a



sudden, after about 29-30 years, on a complaint made by one Dharmendra Kumar Singh, who had been keeping grudge against the petitioner, a fresh report was called for by the Board. On receipt of the adverse report, the petitioner was put to show cause notice which was duly answered and in the meantime the petitioner superannuated on 30.04.2020. Based upon the subsequent report, suggesting the matriculation certificate of the petitioner to be fake and fabricated one, the services of the petitioner termed as forged appointment and she has been deprived from all the retiral/terminal benefits which is against all the settled canons of law.

6. A counter affidavit has been filed on behalf of respondent nos. 4 and 5. Mr. Verma, learned Advocate for the State adverting to the averments made therein contended that on 04.09.2018 a complaint was filed by one Dharmendra Kumar Singh alleging that the matriculation certificate of the petitioner is forged and fabricated, which led to initiation of a fresh enquiry conducted at the departmental level. The matriculation certificate of the petitioner issued from the Bihar School Examination Board, Patna was verified at the level of the Deputy Secretary of the Board and it has been informed through letter No. 4383 dated 20.11.2018 that on verification it has been



found that the enclosed marksheet bearing Roll Code 4321, Roll No. 288 does not bear the name and address of the candidate in record of the Bihar School Examination Board.

7. In the aforesaid premise, a guideline was sought for by the Civil Surgeon-cum-Chief Medical Officer from the Director-in-Chief, Health Services, Bihar, Patna vide Memo No. 461 dated 15.02.2019 and the salary of the petitioner was suspended. The petitioner was further directed to be present physically with documents before the Chief Medical Officer, Rohtas on 10.08.2019. A show cause has also been called for from the petitioner which was duly responded by the petitioner. In the meanwhile, while the proceeding was going on, the petitioner superannuated and, as such, placing reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of the *State of Bihar & Ors. vs. Devendra Sharma [(2020) 15 SCC 466]* the services of the petitioner treated as *void ab initio*, and thus withheld the entire retiral benefits.

8. This Court has meticulously examined the materials available on record and heard the learned Advocates for the respective parties at length. There is no dispute with regard to the initial appointment of the petitioner and *prima facie* it appears to this Court that the appointment took place after



following all the procedures established under the law.

9. The question for consideration before this Court is with respect to entitlement of the petitioner on the wake of suspecting the genuineness of the matriculation certificate based upon the report contained in Memo No. 4383 dated 20.11.2018 issued by the Board, wherein it has been informed that the enclosed marksheet of the original petitioner bearing Role Code-4321, Role No. 288 does not bear the name and address of the candidate in the record of the Board.

10. The facts are admitted to the extent that long back in the year 1988 a complaint was filed against the petitioner and one Leelawati Devi alleging procurement of their appointment based upon forged and fake certificate of matriculation, which led to institution of Chenari P.S. Case No. 68 of 1988, apart from the verification done at the level of the Joint Secretary (Vigilance) of the Board. During the course of investigation a report was also called for and in response thereto the Joint Secretary (Vigilance) of the Board vide its letter No. 2523 dated 15.05.1989 addressed to the I.O. that the certificate of the petitioner on verification was found to be genuine. In the criminal case after proper investigation, the police submitted charge sheet/final report, however, on being found no material



collected during the course of investigation warranting continuation of the criminal case finally the jurisdictional court vide its order dated 20.02.1991 discharged the petitioner and one another accused under Section 239 of the Code of Criminal Procedure. Neither the State nor the Board has questioned the legality of the order of discharge and the petitioner was allowed to continue in service uninterruptedly for about 30 years till a fresh complaint has been filed by one Dharmendra Kumar which is claiming himself to be a news reporter.

11. This Court has also perused the report of the Deputy Secretary (Vigilance) of the Board as contained in Letter No. 4383 dated 20.11.2018, but there is neither any whisper nor the respondent State authorities has bothered to verify the earlier report issued by the Joint Secretary (Vigilance) of the Board, contained in letter No. 2523 dated 15.05.1989, where on proper verification the concerned authority has categorically reiterated the fact regarding the genuineness of the certificate of the petitioner based upon which the petitioner has been discharged. The changing stand of the Joint Secretary (Vigilance) as well as the Deputy Secretary (Vigilance) of the Board is quite surprising and cannot be ignored in such a casual manner. In the opinion of this Court, the genuineness of the earlier report in



favour of the petitioner cannot be wiped out in such a casual and cursory manner without making any verification of its genuineness.

12. The contention of the learned Advocate for the State that the order of discharge by the learned trial Court on account of lack of material is not binding upon the Department as the petitioner has not been acquitted does not inspire confidence of this Court for the reason that neither the order of discharge was questioned before the superior court nor the petitioner was placed under departmental proceeding at any stage. There is no dispute that the acquittal in a criminal case cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. It is now well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge unless the accused has an honourable acquittal in the criminal appeal as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceeding and lead to automatic reinstatement with all consequential benefits. The disciplinary enquiry undoubtedly is not governed by the proof beyond all reasonable doubt or by the rules of evidence which governed by



the criminal trial but certainly based upon preponderance of probabilities [vide; *State of Rajasthan & Ors. vs. Heem Singh, (2021)12 SCC 569*].

13. However, it would be worth noting that if the charges in the departmental enquiry and the criminal case are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive, as has been held by the Hon'ble Supreme Court in its consistent pronouncements in the case of *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.& Ors.*[(1999) 3 SCC 679, *G.M. Tank vs. State of Gujarat & Ors.*[(2006) 5 SCC 446] and recently in the case of *Ram Lal vs. State of Rajasthan & Ors., (2024) 1 SCC 175*.

14. In the case in hand, the petitioner was subjected to



criminal trial and on being found no material on record, the petitioner was discharged and that order was never questioned. Undoubtedly, there was no full-fledged criminal trial leading to acquittal of the petitioner but even the order of discharge cannot be ignored in such a casual and informal manner. Had there been any new material subsequently collected against the petitioner, almost after three decades, the petitioner ought to be given a complete opportunity of hearing by initiating a proper departmental proceeding. The charge levelled against the petitioner was serious in nature, the varacity of which was required to be examined by the documentary and oral evidence in view of the fact that earlier on the same charges the authorities concerned on being satisfied with the report of the Joint Secretary (Vigilance) of the Board has not proceeded departmentally and further the petitioner has been discharged in the criminal case. The law stands well settled that even the matter of forged appointment, proper proceedings are required to be held with an opportunity of defence. The Hon'ble Supreme Court in *Punjab State Electricity Board & ors. vs. Leela Singh, (2007) 12 SCC 146* has held that the charge against the incumbent that he has committed fraud in obtaining the appointment by production of a forged certificate was required to be proved in a duly



constituted departmental proceeding. The service of the incumbent could not have been directed to be terminated relying only on the basis of the decision of the Board/authority. In the case in hand, there is a prima facie conflict with the report submitted by the Joint Secretary (Vigilance) of the Board as contained in Letter No. 2523 dated 15.05.1989 and the report submitted by the Deputy Secretary (Vigilance), Examination Board as contained in Memo No. 4383 dated 20.11.2018. Hence, in the opinion of this Court, the conclusion of the respondent authorities holding the appointment of the petitioner as forged in such a hot-haste manner without giving proper and fair opportunity of hearing to the petitioner cannot be sustained.

15. This Court is also not oblivious of the fact that the petitioner was duly appointed long back in the year 1986 on the post of ANM and after rendering more than 33 years of her service, came to be superannuated on 30.04.2020 and subsequently died on 11.04.2024. Hence in the facts of the case there is no question of relegating the matter to the disciplinary authority and the Department for further enquiry or departmental proceeding as in any circumstances the original petitioner is not alive to rebut the allegation and the charges suspecting the genuineness of the matriculation certificate.



16. The law stands well settled that even in the matter of forged appointment, proper proceedings are required to be held with an opportunity of defence. It is the settled proposition of law that judicial enquiry or departmental proceeding against a delinquent totally abates on death of an employee for the simple reason that in order to punish an employee, there must be subsistence of employer and employee relationship. Once an employee died, the said relationship ceases to exist. The defence, if any, is a personal defence available to the employee and no person can be substituted in place of dead employee; and defend the conduct of a dead employee and, as such, no order could be passed withholding the retirement benefits or any outstanding dues, unless the charge of forgery stands proved in a full fledged departmental enquiry or based upon impeccable documents, genuineness of which cannot be doubted by any party. However, in the case in hand, there are two reports contradictory to each other.

17. It would be worth noting here that whether a document is fake and fabricated itself is a matter of enquiry, in which the delinquent has to be involved and heard, for that there can be no *ex parte* assessment and finding in this regard. All the more, the forgery is a question of fact. The Division Bench of



this Court in LPA No. 568 of 2013 (*The State of Bihar & Ors. vs. Meera Sinha and other analogous cases*) held that to allege that a person obtained appointment on the basis of forgery, cast an aspersion and stigma. The procedure for it therefore has to be fair and proper by holding a proper enquiry with due opportunity of defence and consideration of the defence followed by a reasoned order.

18. This Court further with utmost regard state that in so far the decision rendered by the Apex Court in the case of *Devendra Sharma* (supra), over which heavy reliance has been placed, that relates to mass scale bungling in the recruitment of appointment of Class III and Class IV employees. One Dr. A. A. Mallick, Deputy Director, Health Department, Government of Bihar, who was the then incharge of Tuberculosis Centre and an Assistant Director of Filaria, had appointed 6000 employees against the sanctioned posts of 2250. It was found that as many as 3750 candidates were appointed in a completely unauthorized manner and were squatting against non existing vacancies which led to constitution of five-member Committee by the direction of the High Court to thoroughly investigate the entire matter. On a public notice, the candidates appeared before the Committee and the Committee being firm in its decision that these



appointments made by Dr. Mallick were vitiated from the inception and were required to be set aside; that is how the termination order came to be passed against the persons whose appointments were termed as forged appointment.

19. In the case in hand, there is no order of termination or forfeiture of any retiral benefits, based upon any report of the duly constituted independent Committee, giving all the possible, opportunity of hearing and fair treatment, hence in any view of the matter the action of the respondents in not according the retiral benefits in view of the aforesaid facts and the settled legal position, in the opinion of this Court, is wholly unjustified, illegal and not sustainable in law. The concerned authorities are directed to extend all the consequential retiral benefits and the salary for the period, she discharged the duty and further pension till the date of her death, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

20. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.05.2025
Transmission Date	

