

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6382 of 2017

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Mulmul Devi, W/o Late Soman Bhagat, Resident of Village - Sapha, P.S. -
Sour Bazar, District Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Government of Bihar, Patna.
2. Director in Chief (Nursing), Health Services, Bihar, Patna.
3. The Civil Surgeon Cum Chief Medical Officer, Supaul.
4. Incharge Medical Officer, Primary Health Centre, Basantpur, District Supaul
5. District Treasury Officer Supaul.
6. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar, Advocate
For the Respondent/s	:	Mr. Kamlesh Kishore, AC to SC-12
For the AG, Bihar	:	Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 19-06-2025

Heard Mr. Shiv Kumar, learned Advocate for the
petitioner, Mr. Kamlesh Kishore, learned Advocate for the State
and Mr. Ram Kinker Choubey, learned Advocate for the
Accountant General.

2. The original petitioner came before this Court
seeking a direction upon the respondent authorities to fix and
pay all his retiral benefits, including pension, gratuity, leave
encashment, provident fund, group insurance and other legal
dues payable to him after counting his entire period of service
from 18.01.1981 to 30.06.2014 as well as the benefits under



ACP/MACP with up-to-date interest.

3. It would be pertinent to mention here that during the pendency of the writ petition, the original petitioner died on 12.10.2024 and pursuant to the order of this Court dated 05.12.2024, the wife of the original petitioner came to be substituted, who has been pursuing this matter.

4. The relevant admitted facts, as has been culled out from the materials available on record, are that the husband of the petitioner was duly appointed to the post of Male Family Welfare Worker by the Civil Surgeon-cum-Chief Medical Officer, Ranchi under Memo No.88 dated 15.01.1981 and accordingly he submitted his joining on 18.01.1981 in the office of the In-charge Medical Officer, Primary Health Center, Palkot, Ranchi. Subsequently, the husband of the petitioner was transferred to the Primary Health Center, Birpur, Saharsa and accordingly he was relieved on 04.01.1982. The services of the husband of the petitioner along with several other persons were confirmed vide Memo No.3330 dated 27.12.1990 by the order of the Civil Surgeon-cum-Chief Medical Officer, Saharsa.

5. On being satisfied and after completion of ten years of service, the husband of the petitioner was extended benefit of first time bound promotion in terms with the Resolution



No.10770 dated 30.12.1981 issued by the Finance Department, Bihar. The husband of the petitioner also passed Hindi Noting and Drafting Examination in the year 1997 itself. While the husband of the petitioner was discharging his duty on the aforementioned post, all of a sudden, vide order contained in Memo No.514 dated 30.04.2003, his service was terminated by the Civil Surgeon-cum-Chief Medical Officer, Supaul, on the ground of his appointment being declared as illegal based upon the forged appointment letter. This order of termination was challenged by the husband of the petitioner in C.W.J.C. No.5707 of 2003; which application was allowed with a direction to reinstate the petitioner in service with liberty to the State Government to identify such cases and take disciplinary action after holding enquiry and giving an opportunity of being heard to them.

6. The State being aggrieved assailed the order of the learned Single Judge in L.P.A. No.984 of 2003, wherein the learned Division Bench relegated the matter to the authorities of the Health Department, Bihar directing them to reconsider the case of all the affected employees on the basis of relevant facts and law settled in para-44 of the judgment passed in the case of **Secretary, State of Karnataka and Others v. Uma Devi (3)**



and Others [(2006) 4 SCC 1].

7. It would be pertinent to note here that pursuant to the direction of the learned Division Bench of this Court, a Five Men Committee was constituted to examine the nature and status of appointment of affected person(s) and after completion of the enquiry, the husband of the petitioner was communicated with an enquiry report by which his appointment was again held to be forged by the Enquiry Committee.

8. The order and the enquiry report to the extent whereby the appointment of the husband of the petitioner was termed as illegal and forged, again put to challenge in C.W.J.C. No.16924 of 2009, wherein a Bench of this Court has been pleased to set aside the impugned order of termination and directed the respondents to reinstate the petitioner's husband with all consequential benefits. After much persuasion, the husband of the petitioner was reinstated in service but as no consequential benefit(s) as directed by this Court was accorded to him, a contempt petition bearing M.J.C. No.4124 of 2012 came to be filed. In the meanwhile, the husband of the petitioner was superannuated from his service but no pre and post retiral benefits have been paid to him in the premise that the State had preferred L.P.A. No. 364 of 2014 on being



aggrieved with the order dated 13.09.2011 passed in C.W.J.C. No. 16924 of 2009. Finally, the L.P.A. No. 364 of 2014 preferred by the State has been disposed off by the learned Division Bench of this Court with a direction the appellate authority to consider the case of the petitioner in the light of ratio laid down in the case of **State of Bihar and Others v. Devendra Sharma [(2020) 15 SCC 466]**.

9. In the light of the order of the learned Division Bench, the husband of the petitioner preferred a detailed representation before the Director-in-Chief (Administration) Health Services, Bihar, Patna; however, the claim of the petitioner for post retiral benefits and other dues came to be rejected vide Memo No. 2161 dated 04.08.2022 issued under the signature of Civil Surgeon-cum-Chief Medical Officer, Supaul. The legality of the afore-noted order has also been put to challenge by filing an Interlocutory Application No.1 of 2023.

10. It would be worth noting here that while the present matter was pending consideration before this Court, the State Authorities on being aggrieved with the order dated 12.10.2023 passed in the present matter (C.W.J.C. No.6382 of 2017), preferred L.P.A. No.1273 of 2023, wherein the learned Division Bench taking note of the fact that the order of the



learned Single Judge was based on the alleged non-compliance of the order dated 25.07.2023 and thereby directed for personal appearance of the Director-in-Chief (Administration) Health Services, Bihar, Patna, have finally set aside both the orders dated 25.07.2023 and 12.10.2023 and directed the matter to be posted before the Bench having roster; accordingly, the matter is placed before this Court.

11. Mr. Shiv Kumar, learned Advocate for the petitioner while assailing the impugned order as contained in Memo No.2161 dated 04.08.2022 has strenuously argued that the order is wholly without jurisdiction, inasmuch as the learned Division Bench had directed the appellate authority to consider the case of the writ-petitioner and thus the application of the husband of the petitioner ought to be considered by the Director-in-Chief (Administration) Health Services, Bihar, Patna who is the appellate authority but the impugned order came to be passed by the Civil Surgeon-cum-Chief Medical Officer, Supaul, the Disciplinary Authority of the petitioner and, as such, fit to be set aside, on this score alone. The concerned authority also failed to consider that several persons, who were even party either in Civil Appeal No.7879/2019 and analogous cases or Civil Appeal No.8649/2018 and analogous cases, such as Sri



Surendra Prasad, Sri Arvind Kumar, Sri Parmeshwar Yadav and Khursid Alam, who had also been working as Basic Health Workers like the petitioner's husband, have been paid their entire post retiral benefits as well as the benefit of ACP/MACP.

12. Learned Advocate for the petitioner further contended that admittedly the petitioner's husband was not a party to Civil Appeal No.7879/2019 and analogous cases or Civil Appeal No.8649/2018 and analogous cases and, as such, in no circumstances, the appointment of the petitioner's husband ought to be termed as forged appointment. It is further contended that forgery is a question of fact which is required to be proved in a duly constituted departmental proceeding and thus the service of the husband of the petitioner could not have been terminated taking shelter of the judgment/decision rendered by the Hon'ble Supreme Court, where the original petitioner was not even a party. The husband of the petitioner has never been afforded proper opportunity of hearing to rebut the imputation. It is the admitted position that the original petitioner was appointed long back in the year 1981 and thereafter he rendered his services for more than 35 years; during the period in question, the husband of the petitioner was accorded all the benefits of Government employee, including



time bound promotion, pay increments and the revision of pay on being satisfied his service to be legal and satisfactory. Thus after superannuation, the service of the original petitioner cannot be termed as forged and fabricated without holding any departmental proceeding.

13. Learned Advocate for the petitioner, in order to buttress his submission that the charge against a person that he obtained appointment by fraudulent means and production of forged certificate is required to be proved in a duly constituted departmental proceeding, in absence of that, the authorities cannot take any adverse decision; reliance has been placed on various decisions of the Hon'ble Supreme Court as well as this Court, including the case of **Punjab State Electricity Board and Others v. Leela Singh [(2007) 12 SCC 146]**, **Subodh Kumar Prasad v. State of Bihar and Others [2001(3) PLJR (SC) 187]**, **Sitendra Kumar Singh with Analogous Cases v. State of Bihar and Others [2003 (4) PLJR 282]**, **Rajendra Kamti and Another v. Lalit Narayan Mishra University & Others [2006 (3) PLJR 83]**, **State of Bihar v. Purendra Sulan Kit and another analogous cases [2006 (3) PLJR 386]**, **Ram Krishna Dubey v. State of Bihar and Others [2008 (1) PLJR 841]**, **State of Bihar and Others v. Indra Mohan Rai [2009**



(2) PLJR 869], and Rohit Raj v. The State of Bihar and Others [2023 (1) PLJR 257].

14. Mr. Kamlesh Kishore, learned Advocate for the State while dispelling the aforesaid contentions has vehemently argued that the case of the petitioner is one of the similar matters related to the illegal/forged appointment made by the Regional Authorities of the Health Department in an arbitrary manner ignoring the constitutional mandate for making such appointment. The petitioner has not been able to prove the case regarding her husband's engagement in accordance with law. It is further contended that since the very appointment of the petitioner's husband was *void ab initio*; thus the length of service is nothing in the eyes of law; illegality cannot be perpetuated. When the matter of illegal/forged appointment came to light, many persons were terminated from service in which the petitioner's husband was also terminated from the service by the Civil Surgeon. The petitioner could not claim parity with other persons. Moreover, in the case of the original petitioner, the State on being aggrieved with the order passed by a Bench of this Court in C.W.J.C. No.16924 of 2009, preferred L.P.A. No.364 of 2014, which was disposed off with a direction to the State Authorities to consider the case of the petitioner in



the light of the decision rendered by the Apex Court in **Devendra Sharma** (supra).

15. Learned Advocate for the State finally urged that the Hon'ble Supreme Court in similar matter of illegal appointment has been pleased to hold vide its decision rendered in **Devendra Sharma** (supra) and **The State of Bihar and Others v. Kirti Narayan Prasad** [Civil Appeal No. 8649 of 2018 arising out of SLP(C) No.24782 of 2012] that since the very appointment of the petitioners is *void ab initio*, they cannot be said to be civil servant of the State; therefore, holding disciplinary proceeding envisaged under Article 311 of the Constitution or under any other disciplinary rules shall not arise. The case of the petitioner was duly considered in the light of the direction of the learned Division Bench and found squarely covered by the judgments of **Devendra Sharma** and **Kirti Narayan Prasad** (supra) and accordingly the impugned order came to be passed in tune with the decision of the Apex Court. In the aforesaid factual and legal background, the claim of the petitioner's husband for retiral benefit and other dues have been rejected on account of his appointment being *void ab initio*. In sum and substance, the entire case of the respondent authorities is based on the decision rendered in the case of **Devendra**



Sharma and Kirti Narayan Prasad (supra).

16. This Court has given patient hearing to the learned Advocate for the respective parties and meticulously perused the materials available on record.

17. Before taking up the issue raised in the case in hand regarding entitlement of the husband of the petitioner for pre and post retiral benefits as also as to whether the appointment of the petitioner's husband can be held to be illegal and *void ab initio* without holding a full fledged departmental proceeding and is it sustainable; it would be apposite and prudent to this Court to deal with the legal position on the anvil of which the matter would be considered.

18. It is the settled principles that the rule of law is antithesis of arbitrariness and illegality and it is the foremost duty of the Court to enforce it to neutralise the arbitrariness and illegality, if any committed by the State and its authorities.

19. The Full Bench of this Court in the case of **Ram Sevak Yadav and another analogous cases v. The State of Bihar and Others** [2013 SCC OnLine Pat 67] after taking note of the Constitution Bench decision of the Hon'ble Supreme Court in the case of **Uma Devi** (supra) has been pleased to crystallize and reiterate the settled position that the period of



service being irrelevant and the illegal appointment *void ab initio* cannot be regularized in any circumstances.

20. Article 311 of the Constitution of India deals with the dismissal, removal or reduction in rank of civil servants with a safeguard to protect them from arbitrary action by the Government. Article 311 clearly mandates that before dismissal, removal or reduction in rank of civil servants, they must be informed of the charges against them and given a reasonable opportunity to be heard. The aforesaid right is accorded with certain exception, including that dismissal or removal based on a criminal conviction and when it is not reasonably practicable to hold an enquiry and/or if the same is against the national security interest.

21. True it is that if an employee is not a civil servant, he would not be entitled to get protection under Article 311 of the Constitution, but in a case where a person was duly appointed after following the procedures which is not under challenge and he has been allowed to discharge his duty for a pretty long time of more than two and three decades; in no circumstances, it is outrightly said that there is not even a semblance of the delinquent being a public/civil servant unless his stand rebutted and disproved in accordance with law.



22. There is no dispute that forgery is a question of fact and to allege that a person obtained appointment on the basis of forgery, casts 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, as has been held in the case of **Leela Singh** (supra).

23. The afore-noted principles stood settled by the Apex Court in the case of **Roshni Devi and Others v. State of Haryana and Others [(1998) 8 SCC 59]** that the recruitment process pursuant to which appointment was made is found to be invalid, such appointment should be saved on equitable consideration keeping in view the prolonged continuation of such employees.

24. The principles laid down in the case of **Roshni Devi** (supra) have further been reiterated in the case of **Union of India and Others v. Kishorilal Bablani [(1999) 1 SCC 729]** and also considered in the case of **Roshni Lal and Others v. International Airport Authority of India and Others [1980 Supp SCC 449/1981 SCC (L&S) 303]**, wherein the Court held it unjustified and restrained to reopen the question of legality of appointment after several years of the appointment.



25. True it is that the case of irregular appointment and forged appointment are rest on different pedestal and mere lapse of time cannot sanctify illegality but it is also true that before holding the appointment as illegal and forged, a person cannot be deprived of fair opportunity of being heard; in no case the action of terminating such employees without enquiry can be allowed to sustain.

26. In the case of **Subodh Kumar Prasad** (supra), the Apex Court has held that obtaining of service on the strength of fake appointment letter constitutes a case of disciplinary action.

27. The learned Division Bench of this Court in the case of **Ram Krishna Dubey** (supra) has held that a permanent employee's services can only be terminated by following the procedure laid in Rules for removal of a permanent employee and that procedure must be accorded within Article 311(2) of the Constitution. The Court further observed that since the petitioner was appointed on temporary basis which was extended from time to time and finally he was regularized, his services terminated after long period on the ground that his initial appointment was without due process of selection procedure is said to be unsustainable. Since the petitioner was permanently absorbed, his service could have been terminated



only in the manner the service of a permanent civil servant can be dispensed with. The Court further clarified that the present case being not a case of claim of regularization but the termination of the permanent employee; thus the decision rendered in the case of **Uma Devi (supra) and State of M.P. and Others v. Lalit Kumar Verma [(2007) 1 SCC 575]** would not be applicable.

28. Further the learned Division Bench of this Court in the case of **Indra Mohan Rai** (supra) has held that the appointment made on temporary basis and continued for a long period during which increments and benefits of pay revision given to him; his service cannot be terminated without following the procedure under Article 311(2) of the Constitution of India. The ground taken by the authorities that the appointment suffered from illegality as the procedure prescribed in various circulars not followed is held to be unsustainable.

29. This Court while considering an identical matter in the case of **Rohit Raj** (supra) has held in paragraphs-19, 20 and 21 as follows:-

“19. At this juncture, learned counsel for the State heavily relied upon the judgment rendered by the Hon’ble Supreme Court in the case of **State of Bihar and Ors. Vs. Kirti**



Narayan Prasad passed in Civil Appeal No. 8649 of 2018 [arising out of SLP (Civil) No. 24742 of 2012 and other analogous cases] wherein the Supreme Court while dealing with the matter relating to fake and forged appointment letter, has been pleased to hold that since the appointment of the petitioners' is, ab initio, void they cannot be said to be Civil Servants of the State, therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any other disciplinary Rules, shall not arise. Further reliance has been made on an Apex Court's judgment rendered in the case of **State of Bihar and Ors. Vs. Devendra Sharma**, [Civil Appeal No. 7879 of 2019, arising out of SLP (Civil) No. 11885 of 2012] wherein the Apex Court while dealing with the matter of large number of candidates, who were appointed as Class- III and Class-IV posts in Health Department in Government of Bihar, whose services were terminated on being found forged and fabricated without following any Rules and Regulations. The Apex Court having considered catena of judgments, came to the conclusion that the appointments of the employees in the present set of appeals were not irregular appointment, rather they are illegal appointments in terms of the ratio of Supreme Court judgment in **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others**, reported in (2006) 4 SCC 1. 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 recruitments, such appointments were backdoor entries, an act of nepotism and favoritism and thus from any judicial standards cannot be said to be irregular appointments, but are illegal appointments are wholly arbitrary process.

20. Having carefully gone through the judgments passed by the Hon'ble Supreme Court, this Court is of the view that both the judgments relied by the learned counsel for the State is not applicable in the present facts of the case, as in the present case, at no point of time, the deceased employee had put to departmental proceeding nor any enquiry had ever been conducted by any of the independent agency or the authority. Even the investigation pursuant to the FIR had also never been reached to its final logical conclusion and in fact on account of the death of Mrs. Amrita Sinha, has been abated and now the FIR has no material bearing over the issue.

21. It is also settled proposition of law that a departmental proceeding against an employee totally abates on death of an employee for the simple reason that an order to punish an employee, there must be subsistence of employer employee relationship. Once an employee died,



the said relationship ceased. The defence, if any, is a personal defence available to the employee and no person can be substituted in place of a dead employee to defend the conduct of a dead employee, no order could have been passed withholding the retirement or any outstanding dues.”

30. Now coming to the case in hand, admittedly, the husband of the petitioner was duly appointed long back in the year 1981 and before the impugned order came to be passed in the year 2020, twice his service was terminated which led to filing of the writ petition before this Court and, on both the time, the order of termination came to be set aside giving liberty to the authorities to proceed afresh in accordance with law but on none of the occasion, the husband of the petitioner was subjected to full fledged enquiry and placed in a departmental proceeding giving proper opportunity of hearing.

31. It would be pertinent, at this stage, to refer the decision of *Basudeo Tiwary Vs. Sido Kanhu University & Ors.*, reported in *(1998) 8 SCC 194*, wherein the Hon’ble Supreme Court emphasized the utmost necessity to hold an enquiry in the matter of forged appointment with an opportunity of defence to the charged employee, even in absence of any provision to this effect. The relevant paragraph is encapsulated hereinbelow:-



“12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules or regulations, etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha case [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101] . In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this case will have to be read.”



32. The fact cannot be ignored that on the last occasion, when the learned Division Bench of this Court in L.P.A. No.364 of 2014 relegated the matter to the appellate authority to consider the claim of the petitioner in the light of the decision rendered in the case of **Devendra Sharma** (supra), the impugned order came to be passed by the concerned Civil Surgeon, who is not at all the appellate authority and thus the order can be termed to be wholly without jurisdiction. If an order is directed to be passed by an authority, the same is required to be considered and passed by that authority alone. Any order passed by other authority that too subordinate to such authority, has no sanction in the law.

33. This Court also finds that the husband of the petitioner superannuated long back in the year 2014 itself and the other identically situated persons, especially named in the writ petition, have been extended their pre and post retiral benefits, which facts has also not been specifically denied and now the erstwhile employee is no more alive; hence, relegating the matter to the department to proceed the matter afresh would not arise.

34. In view of the discussions and observations made hereinabove as also in the light of the law laid down by the



Apex Court as well as this Court in the afore-noted judgments, the order impugned as contained in Memo No. 2161 dated 04.08.2022 passed by the respondent no.3, is hereby set aside.

35. This Court directs the concerned respondent(s) to ensure payment of all the admissible death-cum-retiral/outstanding dues to the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

36. The writ petition stands allowed to the extent indicated above.

37. There shall be no order as to cost(s).

38. Pending application(s), if any shall also stands disposed off.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	27.03.2025
Uploading Date	23-06-2025
Transmission Date	

