

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13832 of 2024

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Uday Shankar Prasad S/o Late Bishnu Kumar Prasad, Resident of Village-
Dhobia Kalapur, P.S.-Naubatpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Govt. of Bihar, Patna.
2. The Superintendent, Jawaharlal Nehru Medicao College Hospital Bhagalpur.
3. The District Treasury Officer, Bhagalpur.
4. The Accountant General (A and E) Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. Standing Counsel (12)

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL JUDGMENT

Date : 19-09-2025

Learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Accountant General are
present.

2. The writ petition has been filed for the following
reliefs :-

*“For issuance of a writ in the nature of writ
of mandamus directing the respondent authorities
to revise/refix and pay all the pensionary benefits
of the petitioner such as pension, gratuity, leave
encashment etc. w.e.f. 01.05.2.022, on the basis of
the ACP/MACP, Dearness allowance, annual
increments and revised scale of pay in the 5th, 6th
and 7h pay revision given to him by office order
issued vide memo no. 7474 dated 03.12.2022 under
the signature of the superintenant, Jawaharlal
Nehru Medical College Hospital, Bhagalpur.
And/or pass such other order/orders as this
Hon'ble Court may think fit and proper in the facts
and circumstance of the case.”*



3. Learned counsel for the petitioner submits that the petitioner was initially appointed on the post of *Darban* on daily basis for three months by the order issued, vide Memo No.645 dated 28.03.1987, under the signature of Superintendent, Jawaharlal Nehru Medical College Hospital, Bhagalpur and it was extended from time to time and finally, an order has been issued vide Memo No.1161 dated 29.03.1990 under the signature of Superintendent, Jawaharlal Nehru Medical College Hospital, Bhagalpur, by which the services of the petitioner was absorbed along with the others to the post of Darban in the pay-scale of Rs.775-1025 from the date of joining.

4. After absorption, the services of the petitioner was cancelled with retrospective effect from 30.05.1999 on the ground that his appointment was found irregular and the termination order, as contained in Memo No.2611 dated 21.09.1999 was challenged by the petitioner by filing a writ petition bearing C.W.J.C. No.5243 of 2004 before this Hon'ble Court which was heard along with the other writ petitions and the Co-ordinate Bench of this Court heard the application of this petitioner along with C.W.J.C. No.6575 of 2009 and its analogous cases and vide order dated 06.10.2009 passed the following order, the relevant extract of which are reproduced



hereunder :-

23. I find that almost all the petitioners were confirmed, absorbed and regularized in their service prior to the impugned enquiry, petitioners had earlier challenged their termination orders and thus termination orders were quashed by this Court against which L.P.A. was preferred by the State. The L.P.A. Bench did not set aside the decision of Single Judge whereby termination orders were quashed. Simply a direction was issued to conduct an enquiry; Once a judgment is delivered, its effect can be taken away only by a superior forum and that also, if set aside. Admittedly the judgments delivered in the writ application preferred by the petitioners were not quashed and the direction of this Court to reinstate the petitioners still remained there. I also find that the authorities have wrongly applied the reported decision of Apex Court in Uma Devi's case while considering the nature of appointment of the petitioners. They completely overlooked that petitioners cases are not cases of regularization, but for finding out the genuineness of appointments. Case of regularization of a daily wager or ad-hoc appointee cannot be equated with the case of persons whose appointments have been made permanent. In such cases the parameters as provided in Uma Devi's case cannot have application. This view has been held and affirmed by two Division Bench of this Court in the decision reported in 2007 (4) P.L.J.R. 372 and 2008 (1) B.B.C.J. 608 : [2008 (1) PLJR 841]. The decision reported in 2008 (1) B.B.C.J. 608 : [2008 (1) PLJR 841] also related to termination from service on the ground that appointments were made by forged appointment letter. The Single Judge relying upon the decision of Uma Devi's case had dismissed the writ application. L.P.A. Bench set aside the



judgment passed by the Single Judge, Paragraph 10 of the said judgment is as follows:—

10. The judgment under appeal also appears to be on the premise as if the case is for considering regularization. The reference to Uma Devi's case (Secretary, State of Karnataka v. Uma Devi (3), (2006 (2) PLJR (SC) 363); and Verma's case State of M.P. v. Lalit Kumar Verma, (2007) 1 SCC 575) are pointer to that. The present case being not a case of claim of regularization but the termination of a permanent employee, in our opinion, both the decisions are not applicable to the present case.

24. On consideration of submission of the parties and taking into consideration the facts of the case, I find that the impugned enquiry report has been prepared completely in violation of rule of natural justice. The authorities failed to consider that they are conducting enquiry in relation to permanent employees' appointment. For that proper course was to initiate a departmental proceeding and not to decide the nature of their appointment in absence of the employees. The authorities also ignored the relevant Government circulars which were in vogue at the time of petitioners respective appointment. While putting the petitioners in the category of forged appointee, the members of the enquiry committee have simply considered the dispatch register and not the signatures under which relevant appointment letters were issued. Signatures of the appointing authorities were not verified. All these are the reasons for which the impugned enquiry report dated 31.12.2008 is quashed. The writ applications in which termination orders have been issued by the Civil Surgeon or any other authorities, those letters are also quashed. The respondents are directed to reinstate the petitioners on the post,



they were working. Their reinstatement will be with effect from the date of their termination with all consequential benefits.

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5. It has next been submitted that the State being aggrieved from the order passed by the Co-ordinate Bench dated 06.10.2009, preferred Letters Patent Appeal against some of the order passed by the Co-ordinate Bench, as aforesaid, which was heard along with L.P.A. No.946 of 2003 and a common judgment dated 20.06.2006 was passed directing the respondents to re-consider the cases of all affected employees with a view to find out modalities whereby the law settled by the Constitution Bench in the case of ***Secretary, State of Karnataka v. Uma Devi (3) and Others*** reported in ***(2006) 4 SCC 1***, by which the regularization of the affected employees can be resolved. The relevant portion of the aforesaid judgment is extracted hereunder :-

10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of



reference is reported in *Secy., State of Karnataka v. Umadevi (1)* [(2004) 7 SCC 132 : 2004 SCC (L&S) 935 : (2003) 9 Scale 187] . This Court noticed that in the matter of regularisation of ad hoc employees, there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in *Secy., State of Karnataka v. Umadevi (2)* [(2006) 4 SCC 44 : (2003) 10 Scale 388] . It appears to be proper to quote that order of reference at this stage. It reads : (SCC p. 45, paras 1-5)

“1. Apart from the conflicting opinions between the three-Judge Bench decisions in *Ashwani Kumar v. State of Bihar* [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] , *State of Haryana v. Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] and *Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] on the one hand and *State of H.P. v. Suresh Kumar Verma* [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972] , *State of Punjab v. Surinder Kumar* [(1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553] and *B.N. Nagarajan v. State of Karnataka* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] on the other, which have been brought out in one of the judgments under appeal of the Karnataka High Court in *State of Karnataka v. H. Ganesh Rao* [(2001) 4 Kant LJ 466



(DB)] , decided on 1-6-2001 the learned Additional Solicitor General urged that the scheme for regularisation is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

2. On the other hand, Mr M.C. Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularisation is consistent with the provisions of Articles 14 and 21 of the Constitution.

3. Mr V. Lakshmi Narayan, learned counsel appearing in CCs Nos. 109-498 of 2003, has filed the GO dated 19-7-2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before the Hon'ble the Chief Justice for appropriate orders.”

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

11. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these



principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

6. Learned counsel for the petitioner next submits that the respondent-State undertook the exercise by constituting a Committee to enquire into the allegations of irregular appointment and the petitioner's case was not considered by resorting to the procedures of principles of natural justice and unilaterally finding to the effect was recorded by the said committee, holding these petitioners appointment to be irregular and this petitioner feeling aggrieved, filed another writ petition bearing C.W.J.C. No.8393 of 2009. The said writ petition which



is said to have been filed by this petitioner was heard along with C.W.J.C. No.6575 of 2009 and its analogous cases and a Co-ordinate Bench of this Court passed the following orders :-

“I find that almost all the petitioners were confirmed, absorbed and regularized in their service prior to the impugned enquiry, petitioners had earlier challenged their termination orders and thus termination orders were quashed by this Court against which L.P.A. was preferred by the State. The .P.A. Bench did not set aside the decision of single Judge whereby termination orders were quashed. Simply a direction was issued to conduct an enquiry. Once a judgment is delivered, its effect can be taken away only by a superior forum and that also, if set aside.

Admittedly the judgments delivered in the writ application preferred by the petitioners were not quashed and the direction of this Court to reinstate the petitioners still remained there. I also find that the authorities have wrongly applied the reported decision of Apex Court in Uma Devi's case while considering the nature of appointment of the petitioners. They completely overlooked that petitioners cases are not cases of regularization, but for finding out the genuineness of appointments. Case of regularization of a daily wager or ad-hoc appointee cannot be equated with the case of persons whose appointments have been made permanent. In such cases the parameters as provided in Uma Devi's case can not have application. This view has been held and affirmed by two Division Bench of this Court in the decision reported in 2007 (4) P.L.J.R. 372 and 2008(1) B.B.C.J.608. The decision reported in 2008(1) B.B.C.J. 608 also related to termination from service on the ground that appointments were made by forged appointment letter. The Single



Judge relying upon the decision of Uma Devi's case had dismissed the writ application. L.P.A. Bench set aside the judgment passed by the single Judge. Paragraph 10 of the said judgment is as follows:-

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7. It has next been submitted that the order passed in the case of this petitioner, by which the appointment, according



to the respondents, were found to be irregular was set aside and no appeal against the order passed in C.W.J.C. No.8393 of 2009 is said to have been preferred before higher Courts and as such, the order passed by the Co-ordinate Bench, attained finality and the petitioner's services was reinstated by the State-respondent and on the strength of such reinstatement, the petitioner got superannuated on 30.04.2022 and further, the retiral benefits were also settled by the respondents upon superannuation.

8. On the other hand, the learned counsel for the State submits that on being aggrieved with the order of the Co-ordinate Bench dated 06.10.2009 passed in several writ petitions, several L.P.As were preferred before the the Hon'ble Division Bench being L.P.A. No.1523 of 2010 and its analogous cases, *The State of Bihar and Others v. Kirti Narayan Prasad*, which stood dismissed and the State further preferred Special Leave Petition before Hon'ble Apex Court, in those cases in which the State felt aggrieved by the order passed by the Hon'ble Division Bench.

9. Learned counsel for the State on being confronted with the fact whether any appeal against the writ petition preferred by this petitioner being C.W.J.C. No.8393 of 2009 (*Uday Shankar Prasad v. The State of Bihar and Others*) was



ever filed by the State before any higher Courts. To which, the learned counsel for the petitioner submits that no appeal was preferred against the said order but a batch of appeals were filed justifying the report of the Five Men Committee before the Hon'ble Division Bench and on being aggrieved by the order of Hon'ble Division Bench in some of the appeals, Special Leave Petitions were preferred before the Hon'ble Apex Court vide Civil Appeal No.8649 of 2018 (*The State of Bihar and Others v. Kirti Narayan Prasad and analogous cases*).

10. The selective appeals which was preferred by the State, in which the State felt aggrieved, was heard by the Hon'ble Apex Court and as per the State Counsel, the Hon'ble Apex Court upon adjudication has held that the Five Men Committee Report does not suffer from any infirmity. The State counsel fairly submits that there was no appeal preferred by the State with respect to this petitioner but still, the Five Men Committee Report which is said to have been approved by the Hon'ble Apex Court, admittedly, is a general approval and on that strength, the counsel submits that it equally applies in the case of this petitioner. On the other hand, it has also been admitted that this petitioner was not a party in those cases and as such was not noticed in the said Civil Appeal, namely, Kirti



Narayan Prasad (*supra*) and therefore, there was no question of being heard in that case but given the fact that the Five Men Committee Report which contains his name has been approved by the Hon'ble Apex Court, can also be made applicable in the case of this petitioner. The State counsel does not deny the fact that there was no appeal before the Hon'ble Division Bench and as such, no SLP was filed in the case of this petitioner.

11. Considering the rival submissions of the parties, this Court is of the view that once Co-ordinate Bench of this Court passed an order in favour of the petitioners and the respondents have complied the order dated 06.10.2009, by reinstating this petitioner back in service and allowed this petitioner to continue in service till his superannuation and upon superannuation on 30.04.2022, the pensionary benefits having been settled, was suddenly stopped *vide* order as contained in Memo No.391(4) dated 07.03.2025 by issuing instructions to the Office of Accountant General, holding the appointment of this petitioner to be illegal. Further, the impugned letter dated 07.03.2025, which is appended with the Interlocutory Application as Annexure-6, would go to show that no proceeding of any kind, as provided under law was ever adopted, before issuing impugned order stopping the



pension, by the authorities and therefore, the order vitiates in law and deserves to be interfered with.

12. In rebuttal to the statements made by the learned counsel for the State, learned counsel for the petitioner has taken this Court to Annexure-7, which is a reasoned order passed by the Office of Superintendent, Jawaharlal Nehru Medical College Hospital, Bhagalpur, as contained in Memo No.6455 dated 14.10.2020 in which after retirement, pursuant to impugned order passed in the case of Kirti Narayan Prasad (*supra*), the State-respondent issued notice for dismissal with retrospective effect, for which the petitioner was compelled to file M.J.C. No.3948 of 2013 and the Co-ordinate Bench of this Court passed the following order :-

“Petitioner preferred C.W.J.C. No. 8393 of 2009, titled as Uday Shankar Prasad Vs. The State of Bihar & Ors., which stood allowed vide order dated 06.10.2009, passed in CWJC No. 6575 of 2009, titled as Om Prakash Vs. The State of Bihar & Ors. and other collateral matters (Annexure-1, Page-17). The inquiry proceedings stood quashed.

No appeal has been preferred against the impugned order dated 06.10.2009 (Annexure-1, Page-17).

Let the officiating Secretary, Department of Health, Government of Bihar file his personal



affidavit indicating the latest status with regard to implementation of the order dated 06.10.2009 (Annexure-1, Page-17). This he shall positively do within a period of two weeks from today, failing which he shall remain present in Court and pay a cost of Rs. 25,000/- (twenty five thousand), to be recovered from his personal salary, to be deposited with the Patna High Court Advocates Clerks Welfare Association.

List this case on 14th of December, 2022.

Learned counsel for the respondents undertakes to electronically communicate the order to all concerned.”

13. In consequence of the order passed by the Co-ordinate Bench in M.J.C. No.3948 of 2013, the respondents have come out with Annexure-4 and 5 as contained in Memo No.7474 dated 03.12.2022 and Memo No.7689 dated 14.12.2022 respectively, whereby the benefits under Assured Career Progression Scheme as well as, all such terminal benefits were paid to this petitioner and the issues were given quietus, But after 3 years of passing of such orders and putting at rest all such disputes, all of a sudden, impugned order dated 07.03.2025 came to be issued for which the instant writ petition is said to have been filed and from perusal of the letter impugned, it goes to show that same and similar grounds have been assigned for stopping the pension, which the State-respondents were not



permitted to do so and *prima facie*, they are again in contempt of the order passed by the Co-ordinate Bench of this Court and also the order dated 30.11.2022 passed in M.J.C. No.3948 of 2013, where the respondents accepting the factual legal position, as aforesaid, in the case of this petitioner, took a conscious decision by granting all the benefits in his favour, and accordingly, issues were given quietus by them and proceedings so initiated were dropped.

14. In the background of on-going litigation and looking to the fact that this matter would unnecessarily get prolonged, if the contempt proceedings are drawn, as such, the issues are left open for the time being to be appropriately dealt and decided in appropriate cases, if occasion so arises.

15. Taking into account the fact that the reasons assigned for issuing the impugned letter dated 07.03.2025, has already been adjudicated by this Court and the reasoned order dated 14.10.2022, having already been passed by the respondent themselves, which takes care of all such grounds, the respondents may not be allowed to approbate and reprobate and further the action of the State being in the teeth of the issues settled by the Co-ordinate Bench in the case of this petitioner in C.W.J.C. No.8393 of 2009 and further, no appeal having been



preferred, the said order of the Co-ordinate Bench has attained finality and as such, the impugned order dated 07.03.2025 is unsustainable and therefore, is set aside and the respondents are directed to forthwith start pension with respect to this petitioner by issuing necessary orders to the Office of Accountant General without any inordinate delay.

16. It goes without saying that any such benefits for which the petitioner is entitled, the same shall also be considered and adjudicated on appropriate representation being made by this petitioner and it is expected from the respondent that on such submission, the necessary orders within a period of eight weeks from the date of submission of such representation with a copy of this order shall be passed by a reasoned and speaking order and financial benefits, if any, that finds favour to this petitioner shall be extended within a further period of four weeks.

17. Accordingly, the writ petition is allowed.

(Ajit Kumar, J)

sharun/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.09.2025
Transmission Date	

