

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8806 of 2023

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Birendra Kumar Son of Kamta Prasad Sah, Resident of Village-Harpur, Police Station-Harhi, District-Buxar, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna.
2. That Director-in-Chief, Health Services, Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer, Ara, District-Bhojpur, Bihar.
4. The Incharge Medical Officer, Primary Health Centre, Jagdishpur, District-Bhojpur, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajoy Kumar Chakraborty, Adv.
For the Respondent/s : Mr. Jitendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-06-2026

Heard Mr. Ajoy Kumar Chakraborty, learned Advocate for the petitioner and Mr. Jitendra Kumar, learned Advocate for the State.

2. The petitioner was initially appointed as Mishrak (Pharmacist/Compounded) in the Primary Health Centre, Jagdishpur, District Bhojpur, Ara by the competent authority under Memo No. 1522 dated 06.07.1987. Though the petitioner was duly appointed after following all the procedures and his service was duly confirmed in pursuant to the Government notification no. 450 dated 02.06.1973; nonetheless the Civil Surgeon-cum-Chief Medical Officer vide Memo No. 787 dated



24.02.2003 directed to submit all the relevant papers with respect to appointment and posting for verification. Upon examination of the relevant documents, the services of the petitioner came to be terminated vide Memo No. 2440 dated 06.09.2003 on the ground that due procedure for appointment was not followed at the relevant time. In the meanwhile, the petitioner and various other identically situated persons approached this Court and, in the light of the order dated 26.06.2006 passed in LPA No. 946 of 2003, a Five Men Committee was constituted by the State Government to examine each and every case of forged/illegal appointment. The Five Men Committee submitted its report in the year 2007 in which the petitioner's appointment has been found to be illegal/forged. Based upon the recommendation of the Five Men Committee, the services of the illegal/forged appointees have been terminated again.

3. Aggrieved, the petitioner preferred CWJC No. 14861 of 2009, which came to be dismissed, whereupon Letters Patent Appeal bearing LPA No. 387 of 2013 has been preferred which was allowed by the learned Division Bench of this Court on 15.04.2013.

4. Learned Advocate for the petitioner submitted that in



the light of the order of the learned Division Bench of this Court, the petitioner was reinstated and submitted his joining in the office of the Civil Surgeon, Bhojpur. While the petitioner was discharging his duties, in the meanwhile, the State being aggrieved with the order passed by the Division Bench, preferred SLP(C) No. 2191 of 2014 titled as ‘the State of Bihar vs. Birendra Kumar’. The aforesaid SLP was heard along with various other identical matters with respect to termination of the identically situated persons on the basis of the recommendation of the Five Men Committee in the case of ***The State of Bihar & Ors. vs. Kirti Narayan Prasad (Civil Appeal No. 8649 of 2018)*** and other analogous cases. The Hon’ble Supreme Court vide its order dated 30.11.2018 has upheld the enquiry report of the Five Men Committee by which appointment of several persons including the petitioner were declared forged /illegal.

5. Learned Advocate for the petitioner submitted that the order passed by the learned Division Bench clearly suggests that the termination order of the petitioner was bad in the eyes of law and only on account of absence of entry in the issue register, the certificate based upon which the appointment of the petitioner was made cannot be termed to be forged and fabricated. It is further contended that the Hon’ble Supreme



Court in a batch of Civil Appeals has decided the issue without considering the case of the petitioner independently. Several decisions have been cited before this Court that in various matters the Hon'ble Supreme Court has taken a sympathetic view and taking note of the fact that the employees have discharged the duty for a petty long time, they have been allowed the pensionary benefits.

6. On the other hand, learned Advocate for the State vehemently confronted the aforesaid submissions and submitted that in the case of ***Kirti Narayan Prasad*** (supra) the Hon'ble Supreme Court has observed that all the applicants were the beneficiaries of illegal appointment made by the Civil Surgeon-cum-Chief Medical Officer and they have secured the appointment by producing fake and forged appointment letters. None of them could establish the genuineness and legality of their appointment before the Five Men Committee and as such their appointments were held to be illegal and *void ab initio*. It is further contended that in another batch of SLPs. bearing No. SLP (c) No. 11885 of 2012 (***The State of Bihar & Ors. vs. Devendra Sharma***) and other analogous cases, similar matter of illegal/forged appointment has been considered vide judgment dated 17.10.2019 and no interference has been made with



respect to termination of forged/illegal appointees. Once the order of the learned Division Bench of this Court in LPA No. 387 of 2013 has already been set aside by the Hon'ble Supreme Court in the case of **Kirti Narayan Prasad** (supra), the petitioner cannot place any reliance on it.

7. Considered the submissions advanced by the learned Advocates for the respective parties. Before parting with the case it would be apt and proper to quote para-17 of the judgment rendered in the case of **Kirti Narayan Prasad** (supra) which reads as follows:

“17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on



record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.”

8. After going through the authoritative pronouncement of the Hon’ble Supreme Court in the cases of ***Kirti Narayan Prasad*** (supra) and ***Devendra Sharma*** (supra), this Court finds that the finding of the Five Men Committee/ Special Committee was upheld by the Apex Court and the materials available on record clearly suggests that the Committee has found the appointment of the petitioner as forged/illegal. Once such finding has been affirmed by the Apex Court, no case is made out for any interference. Further in the case of ***Devendra Sharma*** (supra) the Court while considering the claim of the identically situated persons with respect to their entitlement of pension and other retiral benefits taking note of the Full Bench decision in the case of ***Rita Mishra & Ors. V. Director, Primary Education, Bihar & Ors. [AIR 1988 Patna 26]*** has categorically reaffirmed that these rights springs up from a valid



and legal appointment to the post. Once it is found that the very appointment is illegal and non-est, no statutory rights of pension and other mandatory benefits can arise. The Court further ruled that once the very appointment of the candidate has been found to be *void ab initio*, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services.

9. Considering the authoritative pronouncement of the Hon’ble Supreme Court in the cases of *Kirti Narayan Prasad* (supra) and *Devendra Sharma* (supra), the issue of forged and illegal appointment of the petitioner has been put to rest; the claim of the petitioner for post retiral and other benefits is not at all sustainable and this Court also otherwise does not find any merit in the present writ petition. Accordingly, the present writ petition stands dismissed.

(Harish Kumar, J)

Anjani/-

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CAV DATE	
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