

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1608 of 2021

Rohit Raj, S/o Late Umesh Prasad Singh, Resident of Village- Nisihara Tole
Parna, P.S. Biraul, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. Director in Chief (Nursing) Health Services, Bihar, Patna.
3. Civil Surgeon cum Chief Medical Officer, West Champaran, Bettiah.
4. Incharge Medical Officer, Primary Health Centre, Bagha-1, District-West Champaran.
5. The Treasury Officer, Bagha, West Champaran.
6. The District Provident Fund Officer, Bettiah, West Champaran.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. Ramadhar Singh, GP-25
Mr. Upendra Prasad Singh, AC to GP-25
For the Accountant General : Mr. Vivekanand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-11-2022

Heard Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner, Mr. Ramadhar Singh, learned GP-25 and Mr. Vivekanand Kumar, learned counsel for the Accountant General.

2. By filing the present writ petition, the petitioner is seeking a direction upon the respondent authorities to pay the petitioner all the death-cum-post retiral benefits, including family pension, gratuity, leave encashment, general provident fund, group insurance, due salary for the period of March 2016 to



29.07.2020 and other legally payable dues to him with up-to-date statutory interest, on account of death of her mother, Late Amrita Sinha, who died in harness on 29.07.2020, while working as A.N.M. in the Primary Health Centre, Bagha-I, West Champaran.

3. Shorn of unnecessary details, the facts, which led to the filing of the present writ application is that pursuant to an advertisement, inviting application for admission in different A.N.M. schools of the State of Bihar, the mother of the petitioner selected for training, she appeared in the examination and came out successfully. Thereafter, the mother of the petitioner was registered as Auxiliary Nurse Midwifery (hereinafter referred to as 'the A.N.M.')

by the Bihar Nurses Registration Council and a certificate has been issued in her favour. It is further submitted that, thereafter, vide Memo No. 385 dated 30.04.1987, issued by the Civil Surgeon-cum-Chief Medical Officer, Saharsa, the mother of the petitioner (Late Amrita Sinha), was appointed to the post of Female Health Worker in the pay scale of Rs. 580-860/- and posted in the Primary Health Center, Basantpur, Saharsa where she joined on 05.05.1987. Subsequently, on being transferred, she was posted to Primary Health Centre, Thakraha, West Champaran where she joined 29.06.1988 and started



discharging her duty and was getting regular salary without any interruption.

4. All of a sudden, in the year 2016, while the mother of the petitioner was posted in Primary Health Centre, Bagha-I, West Champaran, her salary was stopped along with others till further order, vide letter no. 200 dated 11.07.2016, issued under the signature of In-charge Medical Officer, Primary Health Centre, Bagha-I.

5. It is submitted that on perusal of the aforesaid letter dated 11.07.2016, it is evident that the salary of Late Amrita Sinha was stopped due to non-submission of her appointment letter, although it is contended that she had submitted all the documents for her appointment, including the appointment letter way back in the year 1988 itself. It is next contended that all of a sudden in the year 2017, an FIR, bearing Bagha P.S. Case No. 60 of 2017, has been registered against Late Amrita Sinha, for the offences under Sections 420, 409, 467, 468 and 471 of the Indian Penal Code on a written report filed by the Incharge Medical Officer, Primary Health Centre, Bagha-I, West Champaran, as contained in Letter No. 53 dated 31.01.2017.

6. The mother of the petitioner being aggrieved, filed a writ petition, bearing CWJC No. 14498 of 2019, before this Court



praying therein for directing the respondent authorities to allow her to discharge her duty on the post of A.N.M., on which she was working earlier. However, during the pendency of the aforesaid writ petition, the mother of the petitioner, who had diagnosed Carcinoma, died on 29.07.2020, leaving behind the present petitioner, his brother and one sister.

7. Mr. Kumar, learned counsel for the petitioner vehemently submits that from the materials available on record, it is evident that the aforesaid FIR has been lodged without any enquiry/proceeding, rather the same has been instituted only on the basis of a letter issued by the Civil Surgeon-cum-Chief Medical Officer, Saharsa, by which it was informed that the appointment letter no. 385 dated 30.04.1987, relating to the mother of the petitioner (Late Amrita Sinha), had not been issued from his office. He further submits that during the entire service period, right from 1987 till her death, no enquiry whatsoever has been conducted, either by the department or by any independent authority and even before the issuance of the order, stopping the salary of the mother of the petitioner, Late Amrita Sinha, neither any show-cause notice nor any opportunity has been given to her.

8. Mr. Kumar further relied upon a judgment rendered by a Division Bench of this Court passed in LPA No. 568 of 2013



and other analogous cases and submits that it is well settled that whether a document is fake or fabricated, itself is a matter of enquiry, in which the delinquent has to be involved and heard, for there can be no ex-parte assessment and finding in this regard and it is equally well settled that an order which prejudicially affects a person in breach of principles of natural justice, such an order would be a nullity. He further drawn the attention of this Court towards the finding of the learned Division Bench whereby it has been held that “Forgery is a question of fact. 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.”

9. He further submits that though the FIR has been instituted against the mother of the petitioner and the investigation was in progress, but after the death of his mother, the same has already abated. Further in absence of any charges proved in a departmental proceeding, any allegation leveled against the mother of the petitioner can not be substantiated under any law. He further relied upon various judgments of this Court, including the judgment rendered by the Hon’ble Supreme Court



in the case of **Shridhar s/o Ram Dular Vs. Nagar Palika, Jaunpur and others**, reported in **1990 (Supp) SCC 157**, further **Basudeo Tiwary v. Sido Kanhu University and others**, reported in **1998 (8) SCC 194**, **Punjab State Electricity Board and Ors. Vs. Leela Singh**, reported in **(2007) 12 SCC 146** and also in the case of **Subodh Kumar Prasad Vs. State of Bihar and Ors.** reported in, **2001 (3) PLJR (SC) 187**.

10. By relying upon the aforesaid judgments, Mr. Kumar submits that the charges against the mother of the petitioner that she has committed fraud in obtaining appointment by production of a forged certificate was required to be proved in a duly constituted departmental proceeding and in absence of that the respondents cannot take any adverse decision against her.

11. On the other hand, learned counsel for the respondents vehemently confronted the submissions made on behalf of the learned counsel for the petitioner and submits that the petitioner's mother along with others were asked to submit appointment letters in the office of the Primary Health Centre, Bagha-I, West Champaran, but when they did not submit their appointment letters, the Incharge Medical Officer, Primary Health Centre, Bagaha-I stopped the salaries of those employees who had not submitted their appointment letters, including the



petitioner's mother, till further order. He further contended that after verification of the relevant records, the Civil Surgeon cum Chief Medical Officer, Saharsa has informed that the appointment letter of Late Mrs. Amrita Sinha, A.N.M. as contained in Memo No. 385 dated 30.04.1987, it appears that the same was not issued from his office. It has further been informed that in the appointment letter of Late Amrita Sinha, it was mentioned that she was successful in the A.N.M. examination conducted in April 1986, however, when a list of successful trained ANMs. was called for, the Registrar, Bihar Nurses Registration Council informed that in the list of successful trained ANM, the name of the petitioner's mother has not been mentioned. Further the appointment letter, as contained in Memo No. 385 dated 30.04.1987, was issued under the signature of Dr. Prem Nath Jha, Civil Surgeon, whereas the tenure of Dr. P. N. Jha in Saharsa District was from 20.07.1987 to 30.11.1988. Hence, prima facie, it is evident that the petitioner's mother had procured forged document and on the basis thereof, she secured her appointment fraudulently. On account of the aforesaid fraudulent appointment, the FIR was also instituted and, as such, from the materials available on record, it is evident that her appointment was illegal



and void ab initio. Hence, the petitioner's mother is not entitled to get any retiral benefit.

12. Having heard the parties at length and the materials available on record, this Court finds some undisputed facts that admittedly there had never been any departmental proceeding initiated against Late Amrita Sinha nor at any point of time an enquiry was conducted with regard to her appointment, being forged and fabricated. So far the institution of the FIR is concerned that has never been culminated into any finding or at no point of time, the allegation/charges have been proved by a competent Court, rather on account of death of Late Amrita Sinha, the same has been abated.

13. Now the question for consideration before this Court is as to whether there is any illegality and the infirmity in the impugned action of the respondents in withholding the retiral/outstanding dues amount of the mother of the petitioner, on account of her appointment being forged and illegal, who had discharged the duty on the post of A.N.M. for the period 1987 till she died on 29.07.2020.

14. The Division Bench of this Court while considering the identical matter, wherein similar issues of ANMs. have been dealt with, whose services were terminated on the charges of their



appointment letters being found forged and fabricated, have been pleased to hold that any administrative order having civil consequences is required to be reasoned to disclose the nature of materials considered, prevent arbitrariness and encourage faith and fairness in the decision making process.

15. 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. Reference may be made to 2007(12) SCC 146 (Punjab State Electricity Board and Ors. Vs. Leela Singh) observing at paragraph 5 as follows:

“The charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee.”

16. The learned Division Bench further held that the primary question for consideration on what appears to undisputed facts are if there is any infirmity in the decision making process or not, if there is no infirmity we may not go into the merits. Conversely, if the decision making process is flawed, the final conclusion is irrelevant.



17. Paragraph 8 of the judgment rendered in the case of Shridhar s/o Ram Dular Vs. Nagar Palika, Jaunpur and others, reported in 1990 (Supl) SCC page 157, which is as follows:-

“The High Court committed serious error in upholding the order of the government dated February 13, 1980 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's order had been passed without affording any opportunity of hearing to the appellant therefore the order was illegal and void. The High Court committed serious error in upholding the Commissioner's order setting aside the appellant's appointment. In this view, orders of the High Court and the Commissioner are not sustainable in law.”

18. This Court also tempted to quote Paragraph 12 of the judgment rendered in the case of **Basudeo Tiwary v. Sido Kanhu University and others**, reported in (1998) 8 SCC 194 at page 199 which is as follows:

“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.”



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 on 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.

22. In any view of the matter the impugned action of the respondents in not making payment of retiral / outstanding dues to the petitioner is wholly unjustified and not sustainable in the eyes of law.

23. Accordingly, this Court directs the concerned respondents to ensure the payment of all the admissible death- cum- retiral / outstanding dues to the petitioner by treating his mother died in harness, as early as possible, preferably within a period of eight weeks from the date of receipt / production of a copy of this order.

24. So far the payment of arrears of salary for the period March 2016 to 29.07.2020 is concerned, since the issue with regard to the stoppage of salary for the said period is subjudice in C.W.J.C. No. 14498 of 2019, the same shall be abide by the final outcome of the said writ petition.



25. The present writ application stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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