

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.468 of 2022

In
Civil Writ Jurisdiction Case No.17382 of 2019

=====

Fuldev Yadav Son of Dukhi Yadav, Resident of Ward No. 6, Mujiyasi Parsa,
Parsa Ghoghardiha, District- Madhubani, Bihar- 847402.

... .. Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna.
3. The Director-in- Chief (Disease Control), Directorate, Health Services, Bihar, Patna.
4. The Deputy Director, Health Services, Bihar, Patna.
5. The Civil Surgeon-cum- Chief Medical Officer, Madhubani.
6. In Charge Medical Officer, Primary Health Centre, Khutawna, Madhubani.
7. The In- Charge Medical Officer, Referral Hospital, Foolparas, Madhubani.

... .. Respondents.

=====

Appearance :

For the Appellant	:	Mr. Sanjeet Kumar, Advocate. Mr. Raj Kamal, Advocate. Mr. Aditya Dev, Advocate.
For the State	:	Mr. S.D. Yadav (AAG-9).

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-04-2025

The appellant has assailed the order of the learned Single Judge dated 25.08.2022 passed in C.W.J.C.No.17382 of 2019.

2. Brief facts of the case are that the appellant was initially appointed to the post of Driver on daily wages basis on



28.07.1990. Thereafter, his services were regularized on 02.08.1991 vide Memo bearing No.1789. These kinds of appointments were the subject matter before the Hon'ble Lokayukt, Bihar, Patna. With reference to some report of the Civil Surgeon, Madhubani, show cause was issued to the appellant on 28.05.2019 by the Director-in-Chief (Disease Control), Health Services, Bihar, regarding the validity of the appellant's appointment. Appellant had submitted his explanation and it was not satisfied to the concerned authority and proceeded to terminate the services of the appellant on 25.06.2019. Thus, the appellant assailed the order of the termination dated 25.06.2019 in C.W.J.C. No.17382 of 2019.

3. The learned Single Judge proceeded to dismiss the writ petition (C.W.J.C. No.17382 of 2019) vide order dated 25.08.2022 after narrating the facts of the case and treating the regularization as illegal and void *ab initio*. Even though the learned Single Judge has cited decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. Versus Umadevi & Ors.**, reported in (2006) 4 SCC 1 and the learned Single Judge has taken note of yet another decision, namely, **State of Bihar and Others versus Kirti Narayan Prasad** passed in **Civil Appeal No.8649 of 2018**. The Hon'ble



Supreme Court in **Kirti Narayan Prasad case** (cited supra) has held that paragraph-53 of **Umadevi Judgment** (cited supra) cannot be taken into consideration.

4. The learned Single Judge has committed error in not noticing that there is no withdrawal/cancellation/modifying/reviewing the regularization order dated 02.08.1991 vide Memo bearing No.1789. As long as regularization order dated 02.08.1991 is not cancelled or reviewed in the manner known to the law and merely relying on Hon'ble Supreme Court decision to the effect that appointment is illegal and void *ab initio* cannot be held. As long as regularization order dated 02.08.1991 vide Memo bearing No.1789 is intact and it is even to this day in vogue, therefore, the respondents cannot resort short circuit method. Further, it is to be noticed that if there are errors committed by the Appointing Authority/ Regularizing Authority in that event appellant shall not be penalized. No inquiry or finality has attained insofar as taking action against such of those officials who have undertaken the exercise of appointment and regularization. Further, it is to be noticed that appellant has discharged the duties of the post of Driver, that too in the Hospital and it is an essential service. After extracting services for these many years and for no fault on his part, he should not



be punished. In fact, after regularization to the post of Driver on 02.08.1991, appellant would be regular holder of the post of Driver and he is a Government servant. Before passing any adverse order which has a civil consequences, in such circumstances, he is governed by Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The same should have been resorted to by the Disciplinary Authority/ Appointing Authority. These are all statutory right vested with the Government servant. For permanent employee of the State of Bihar, if any action is required to be taken insofar as passing major penalty order like termination/dismissal/removal/ compulsory retirement/withholding of increments with cumulative effect, invariably departmental inquiry should be resorted to for imposition of major penalty under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The same has not been resorted to in the present case. These are all the relevant statutory provisions which have not been taken note of by the learned Single Judge. Therefore, the order of the learned Single Judge dated 25.08.2022 passed in C.W.J.C. No.17382 of 2019 and the impugned termination order dated 25.06.2019 passed by the Director-in-Chief (Disease Control), Directorate of Health Services, Government of Bihar,



Patna, stand set aside. He is directed to restore the position of the appellant to the extent of reinstating him within a period of one month from the date of receipt of this order. Thereafter, extend all service and monetary benefits during the intervening period from 25.06.2019 till reinstatement read with the arrears of payments are made within a period of three months.

5. The present L.P.A. No.468 of 2022 stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025.
Transmission Date	NA

