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9/3/12

IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL REVIEW JURISDICTION)
CIVIL REVIEW NO. OF 2012
ARISING OUT OF CWJC NO. 16518 of 2009

In the matter of:

Ram Awant Mahato

-Petitioner

VERSUS

State of Bihar & Ors.

-Respondents

Subject: Civil Review

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IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL REVIEW JURISDICTION)
CIVIL REVIEW NO. _____ OF 2012
ARISING OUT OF CWJC NO. 16518 of 2009

In the matter of:

Ram Awtar Mishra

Petitioner

VERSUS

The State of Bihar & Ors.

Respondents

SYNOPSIS

<u>PRAYER</u>	The instant Review Application is being directed against the order dated 22.03.2010 passed by Hon'ble Mr. Justice J.N. Singh whereby and where under the petition filed by the petitioner for quashing the termination order contained in Memo No. 1233 dated 20.08.99 issued under the signature of Civil Surgeon-Cum-Chief Medical Officer, Madhubani has been dismissed	
<u>26.06.1989</u> <u>ANX-7</u>	The Civil Surgeon-Cum-Chief Medical Officer, Madhubani is competent to appoint the petitioner including others in view of the powers granted to them vide letter as contained in Memo no.-574(5) dated 26.06.1989.	<u>PARA-9</u>
<u>27.09.1989</u> <u>ANX-1</u>	Thereafter the petitioner was appointed vide letter contained in Memo No. 2737 dated 27.09.1989 in the office of Primary Health Centre, Madhepur	<u>PARA-3</u>
<u>17.11.1992</u> <u>ANX-2</u>	The deduction of G.P.F amount was also censured by the concern authorities from the salary of the petitioner which would be apparent from document dated 17.11.1992	<u>PARA-4</u>
<u>22.09.1994</u>	A direction was issued by this Hon'ble Court passed in CWJC NO. 10464/93 with regard of appointment	
<u>24.04.96</u> <u>ANX-3</u>	Pursuant to the direction, a letter dated 24.04.96 was written to the Civil Surgeon-Cum-Chief Medical Officer, Madhubani, stating therein that the petitioner along with others do not come in the light of the abovementioned	<u>PARA-5</u>

	order and therefore, necessary verification will be done regarding appointment of the petitioner	
<u>31.05.1996</u> <u>ANX-4</u>	Vide memo no. 1183 dated 31.05.96 by the Civil Surgeon, Madhubani gave direction to all Incharge Medical Officer for making payment	
<u>04.07.1996</u> <u>ANX-5</u>	The respondent no. 1 issued a letter no. 136 dated 04.07.96 and the petitioner was remitted to work and posted in the office of Sub-Div. no. Belonchi.	<u>PARA-7</u>
<u>20.08.1999</u> <u>ANX-6</u>	All of sudden by letter contained in memo no. 1233 dated 20.08.99 issued under the signature of Civil Surgeon-Cum-Chief Medical officer, Madhubani, the service of the petitioner was terminated on the ground that the appointment was made without following the procedure	<u>PARA-7</u>
<u>20.05.2009</u> <u>ANX-8</u>	The termination order issued by the respondents was challenged by the aggrieved persons and direction was passed to consider the case of appellants in L.P.A. No. 946/03 but despite there being such direction passed by the Hon'ble Division Bench in LPA No.-946/2003 and its analogous cases vide order dated 26.06.2006, the respondents did not consider the case of the petitioner, which led to the filing of the writ petitioner, but unfortunately the same was dismissed on the ground of delay and laches and on the basis of the direction issued in the aforesaid L.P.A. No. 946/2003, in similar matters the Hon'ble has interfered and set aside the termination order with consequential reinstatement vide order dated 20.05.2009 passed in CWJC No. 6431 of 2009 and its analogous cases.	<u>PARA-13</u>
<u>12.11.2009</u>	The another person who was appointed along with this petitioner vide letter contained in Memo No. 2737 dated 27.09.1989 had also filed a writ application challenging the order of termination, which was also impugned in the	<u>PARA-14</u>

present application, which was set aside by this Hon'ble Court in CWJC NO. 9661/2009 vide order dated 12.11.2009

14.07.11

ANX-9

Thereafter the state preferred Letters Patent Appeal for setting aside the order dated 12.11.2009 passed in CWJC NO. 9661/2009 by preferring an Appeal being LPA No. 1718/2010, which was dismissed vide order dated 14.07.2011 by the Division Bench of this Hon'ble Court and pursuant to the order passed by the Division Bench, in different Letters Patent Appeal, the respondents considered the case of the concerned terminated Employees and accordingly been reinstated back in service

PARA-14

26.04.2012

ANX-10

In another matter also, the Hon'ble Court has given indulgence by remanding the matters to the committee for examination in terms of the order issued by the Division bench in aforesaid matter, therefore, the present matter also requires the similar treatment which stood dismissed on the ground of delay and latches on account of the facts not properly been presented even by the State respondents, who were obliged under the directives of the Division Bench to have given the similar treatment and pursuant to the same the reinstatement has been ensured vide letter no.-1080 dated 26.04.2012.

PARA-15

HENCE, THE PRESENT REVIEW APPLICATION

3/2/09
AUTH. NO. 3184 DT. 16/12/2008



372402

BIHAR

INDIA **Zero*Zero*Zero*Zero*Zero*Six**Five**

IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL REVIEW JURISDICTION)
CIVIL REVIEW NO.- OF 2012
ARISING OUT OF CWJC NO. 16518 of 2009

In the matter of an application under Article 226 of the Constitution of India for reviewing the order dated 22.03.2010 passed by Hon'ble Mr. Justice J.N.Singh in CWJC No. 16518/09 (Ram AwtarMahto Versus The State of Bihar &Ors.)

And

In the matter of:

Ram Awtar Mahto s/o Late Raghubir Mahto, resident of Village - Manjhi, P.S. Manigachhi, District - Patna,

VERSUS

1. The State of Bihar, through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director In Chief, Health Services, Bihar, Patna.

3. The Civil Surgeon-Cum Chief Medical Officer Patna.
4. The In-charge Medical Officer, Primary Health Centre,
Madhepore District-Madhubani.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her companion Justices of the said Hon'ble Court.

The humble petition on behalf of
the above named petitioner.

MOST RESPECTFULLY SHEWETH:-

1. That the instant Review Application is being directed against the order dated 22.03.2010 passed by Hon'ble Mr. Justice J.N.Singh^{in CWJC No. 16518/09} whereby and where under the petition filed by the petitioner for quashing the termination order contained in Memo No. 1233 dated 20.08.99 issued under the signature of Civil Surgeon-Cum-Chief Medical Officer, Madhubani has been dismissed/rejected simpliciter on the ground of delay and laches.

2. That the petitioner has not moved on earlier occasion before the Hon'ble Court for the relief as prayed herein above.
3. That it is stated that the petitioner was appointed on the post of basic health officer as per order contained in Memo No. 2737 dated 27.09.1979 issued under the signature of Chief Surgeon-Cum-Chief Medical Officer, Madhubani and accordingly was posted in the office of Primary Health Centre, Madhepur and pursuant thereto the petitioner gave his joining to said the post in the office of Primary Health Centre, Madhepur.

A photocopy of Memo No. 2737 dated 27.09.1979 is being annexed herewith and marked as Annexure-1 to this application.

4. That it is stated that the deduction of G.P.F amount was also ensured by the concern authorities from the salary of the petitioner and the documents dated 17.11.1992 in connection of the same which is being on record would sufficiently demonstrate the statement made herein above to show that the appointment of the petitioner was valid and made by the competent authority.

A photocopy of document dated 17.11.92 is being annexed herewith and marked as Annexure-2 to this application.

It is stated that by letter no. 81 dated 24.04.96 issued under the signature of the Regional Deputy Director Division, Darbhanga a letter was written to the Civil Surgeon-Cum-Chief Medical Officer, Madhubani, stating therein that the petitioner along with others do not come in the light of the order dated 22.09.1994 passed in C.W.J.C. No. 10464/93, therefore, the petitioner will continue in his service along with others and necessary verification will be done regarding his appointment, and entire arrears of salary and current both will be released immediately and thereafter vide memo no. 1183 dated 31.05.96 by the Civil Surgeon, Madhubani gave direction to all Incharge Medical Officer for making payment.

A true/photocopy of letter dated 24.04.96 & letter dated 31.05.96 are being annexed herewith and marked as Annexure-3 & 4 to this application.

6. That it is stated that after receiving the letter from R.D.D., Darbhanga Division, Darbhanga and Civil Surgeon, Madhubani, the respondent no. 5 issued a letter no. 136 dated 04.07.96 and the petitioner was reappointed as a Sub-Centre Officer of Sub-Centre, Belonchi.

A true/photocopy of letter dated 04.07.96 is being annexed herewith and marked as Annexure-5 to this application.

7. That it is stated the petitioner was discharging his duty with full dedication and honesty but all of sudden by letter contained in memo no. 1233 dated 20.08.99 issued under the signature of Civil Surgeon-Cum-Chief Medical officer, Madhubani, the service of the petitioner was terminated on the ground that the appointment was made without following the procedure.

A True/photocopy of letter dated 20.08.99 is being annexed herewith and marked as Annexure-6 to this application.

8. That it is stated that the appointment of the petitioner initially made on the post of Basic Health Worker by the then

Civil Surgeon, Madhubani on the recommendation of the Establishment Committee and at that time Civil Surgeon was the competent authority to appoint class III/IV employee and after following all the formalities/procedure the petitioner was appointed on the post of Basic Health Worker.

9. That it is further stated that the appointment of the petitioner was initially made on Basic Health Worker by the then Civil Surgeon-Cum Chief Medical Officer, Madhubani after following all the formalities who had the power to appoint such type of appointment like the petitioner and accordingly worked on the said post for about 10 years and the same would be evident from the letter as contained in Memo no.-574(5) dated 26.06.1989.

A True/photocopy of Memo no - 574(5) dated 26.06.1989 is being annexed herewith and marked as Annexure-7 to this application.

10. That it is stated that the respondents have not followed the principle of last come first go in the matter of employment since juniors have been retained and it is specifically stated that the junior who were appointed later on in the same and

similar manner and who have been appointed by the same appointing authority, therefore, it is crystal clear that the respondents have adopted the policy pick and choose in the matter of appointment.

11. That it is stated that the respondent is issuing the signed termination order and that the appointment of the petitioner is illegal gets controverted from the letter contained in Memo no.-574(5) dated 26.06.1989 which specifically denotes that the then Civil Surgeon-Cum-Chief Medical Officer, Madhubani who had the competence to appoint the petitioner based on which the petitioner had worked regularly about 10 years with the full dedication of his superiors having no adverse remarks against the sanctioned vacant post.

12. That it is further stated that the service book of the petitioner was opened by the Controlling authorities and the petitioner signed the same and was countersigned by the petitioner and he has regularly paid including Dearness Allowance, Medical Allowance, House Rent, etc and the deduction of insurance and General Provident Fund was also made from his salary. The petitioner was treated as permanent/regular staff of Health Department of Government of Bihar.

13. That it is stated that the termination order issued by the respondents was challenged by the aggrieved persons and accordingly the Hon'ble court interfered in the matter by directing the state to consider the case of the all the terminated employees in the light of the Constitutional Bench decision of the Hon'ble Supreme Court for regularisation and while considering the cases of the appellants, the cases of all the similarly situated persons shall also be considered but despite there being such direction passed by the Hon'ble Division Bench in LPA No.-946/2003 and its analogous cases vide order dated 26.06.2006, the respondents did not consider the case of the petitioner, which led to the filing of the writ petitioner, but unfortunately the same was dismissed on the ground of delay and laches and on the basis of the direction issued in the aforesaid L.P.A. No. 946/2003, in similar matters the Hon'ble has interfered and set aside the termination order with consequential reinstatement. The order dated 20.05.2009 passed in CWJC No. 6431 of 2009 and its analogous cases is being brought on record for appreciation and adjudication in the matter.

A True/photocopy of order dated
20.05.2009 passed in CWJC No.

6431 of 2009 and its analogous cases are being annexed herewith and marked as Annexure 8 to this application.

14. That it is stated that the person who was appointed along with this petitioner, the letter contained in Memo No. 2737 dated 27.09.1989 issued under the signature of Chief Surgeon-Cum-Chief Medical Officer, Madhubani had also filed a writ application challenging the order of termination, which was also impugned in the present application, which was set aside by this Hon'ble Court in CWJC NO.-9661/2009 vide order dated 12.11.2009, against which the state preferred Letters Patent Appeal for setting aside the order dated 12.11.2009 passed in CWJC NO.-9661/2009 by preferring an Appeal being LPA No.-1748/2010, which was dismissed vide order dated 14.07.2011 by the Division Bench of this Hon'ble Court and pursuant to the order passed by the Division Bench, in different Letters Patent Appeal, the respondents considered the case of the concerned terminated Employees and accordingly been reinstated back in service.

A True/photocopy of order dated
14.07.2011 passed in LPA No.-

1748/2010 is being annexed herewith and marked as Annexure-9 to this application.

15. That it is stated that in another matter also, the Hon'ble Court has given indulgence by remanding the matters to the committee for examination in terms of the order issued by the Division bench in aforesaid matter. therefore, the present matter also requires the similar treatment which stood dismissed on the ground of delay and laches on account of the facts not properly been presented even by the State respondents, who were obliged under the directives of the Division Bench to have given the similar treatment and pursuant to the same the reinstatement has been ensured vide letter no.-1080 dated 26.04.2012 and further the petitioner seeks leave to produce the reinstatement order issued by the respondent in respect of similarly situated persons at the time of hearing.

A True/photocopy of letter no.-1080 dated 26.04.2012 is being annexed herewith and marked as Annexure-10 to this application.

16. That in view of the facts as detailed above, the present review application is required to be entertained on equity as well as the decision of the Hon'ble Court to remand the matter directing the state to consider the case of the petitioners employees in the light of the Constitution Bench decision of the Hon'ble Supreme Court for regularization.
17. That in the facts and circumstances the petitioners having no other alternative efficacious remedy but to approach before this Hon'ble Court by filing the instant review application by bringing on record the material facts for proper adjudication of the matter.
18. That the petitioners have not moved before this Hon'ble Court on any earlier occasion for the relief prayed for

Being aggrieved with the order dated 22.03.2010 passed by **Hon'ble Mr. Justice J.N.Singh** in CWJC No. 16518/09 (Ram Awtar Mahto Versus The State of Bihar &Ors.), the petitioner prefers the instant review application on amongst the other the following:-

Grounds

- i. For that the order dated 22.03.2010 passed by Hon'ble Mr. Justice J.N.Singh in CWJC No. 16518/09 (Pan Awaras) against the State of Bihar & O.C. No. 1000/2009 in the absence of the material documents which was concealed by the state respondents at the time of passing of the impugned order.
- ii. For that the order impugned deserves to be reviewed as there is error apparent on the face of the record as there is already a direction issued in this regard by the Division Bench of this Hon'ble Court directing the state to consider the case of the all the terminated employees in the light of the Constitution Bench decision of the Hon'ble Supreme Court for regularization.
- iii. For that it is expedient to take note of the fact that similarly situated person appointed along with the petitioner had filed the application for setting aside the impugned order of termination, in which the name of the present petitioner also finds place, was allowed by this Hon'ble Court

and the said order was affirmed in Appeal also and pursuant thereto, others have been reinstated in service.

iv. For that in any case of this matter the order passed by the Division Bench is required to be reviewed on the ground of equity because on number of occasions, in the similar matters, the intervention of the Hon'ble Court was sought by different persons terminated through the similar impugned order on similar subjective considerations, were directed to be considered including all similarly situated persons, which sufficiently explains that the order passed by the Division Bench was also applicable to this petitioner and there was no deliberate delay rather on discrimination being pleaded by the respondents brought the petitioner before this Hon'ble court in which the impugned order came to be issued.

v. For that in view of the Division bench order, the case of the writ petitioner was required to have been considered in similar terms as being

obligatory upon the respondents in terms of the aforesaid order.

- vi. For that there has not been any consideration to the fact that the appointment of the petitioner was initially made on Basic Health Officer by the then Civil Surgeon Cum-Chief Medical Officer, Madhubani after following all the formalities who had the power to appoint such type of appointment like the petitioner and accordingly worked on the said post for about 10 years and the same would be evident from the letter as contained in Memo no.-574(5) dated 26.06.1989.
- vii. For that there has not been any consideration to the effect that petitioner including others worked on the said post for more than a decade and in terms of order of the Division Bench, the respondents are under obligation to find out the cases of those affected Employees which can be termed to be irregular appointment and not illegal appointments and then to take steps to regularize the services of irregular appointed employees and the respondents till date has not categorized the

case of the petitioner instead for reasons best known did not apprise the facts as detailed above entailed issuing of the impugned order under review.

- viii. For the petitioner reserves to themselves the right to maintain the grounds at the time of hearing in terms of the queries made by the Hon'ble Court on the material emerging on record.

It is therefore, prayed that your lordships may graciously be pleased to admit this application, issue notice to opposite party, call for records and after hearing the parties be pleased to review its order dated 22.03.2010 passed by Hon'ble Mr. Justice J.N.Singh in CWJC No. 16518/09 (Ram Awtar Mahto Versus The State of Bihar & Ors.), in the backdrop of the fact that the Division Bench of this Hon'ble Court directing the state to find out the cases of those affected

Employees which can be termed to be irregular appointment and not illegal appointments and then to take steps to regularize the services of irregular appointments in the light of the Constitution as per decision of the Hon ble Supreme Court for regularization.

And/OR

Pass any other order/ orders as your lordship may deem fit and proper.

And for this the petitioner shall ever pray.

AFFIDAVIT*aged about 49 years.*

Ran Awtar Mahto s/o Late Raghubir Mahto, resident of Village- Amtahi, P.S.- Manigachhi, District Darbhanga, do hereby solemnly affirm and state as follows:

1. That I am the Petitioner No. 3 of 1916 Assistant Commissioner and as such is well acquainted with facts and circumstances of the case.
2. That the contents of this petition have been read over to me and also been explained to me in Hindi and understood the same.
3. That the statements made in paragraph no. ~~1-2, 10, 16~~ ~~17-18~~ are true to my knowledge and those made in paragraph no. ~~3 to 9, 11, 12 to 15~~ are true to my information derived from the case records and the rest are by way of submission.
4. That the annexure are the true copies of their respective originals.

रान अतार माहो

एनेकसचर-1

कार्यालय, असैनिक शल्य चिकित्सक-सह मुख्य चिकित्सा पदाधिकारी,

मधुवनी

आदेश

निम्नलिखित नाम के कार्यकर्ताओं का सहानुभूतिपूर्वक विचारणा प्रार्थना प्रोन्नति कैसे हुए अंकित स्थान, पद एवं वेतनमान में कार्यभार ग्रहण करने की तिथि से नियुक्ति एवं पदस्थापित किया जाता है। इनमें योगदान के पूर्व किसी सहायक असैनिक शल्य चिकित्सक से स्वास्थ्य प्रमाण पत्र प्राप्त योगदान प्रतिवेदन के साथ संबंधित प्रभारी चिकित्सा पदाधिकारी के समक्ष प्रस्तुत करना होगा। इनके योगदान में किसी प्रकार का यात्रा भत्ता देय नहीं होगा।

क्र०सं०	नाम एवं पता	पद एवं वेतनमान	पदस्थापन का स्थान
1.	श्री पवन कुमार झा पिता-श्री कमलाकांत झा ग्राम-कविलपुर पो०-लहरियासराय जिला-दरभंगा	स्वास्थ्य प्र०-550 730-1040	प्र०स्वा०केंद्र मधुपुर (मधुवन)
2.	श्री राजेश कुमार मल्लिक पिता-श्री दिवाकर मल्लिक ग्राम-पो०-देवहार भाया-बाबुघरही जिला-मधुवनी	लिपिक 580-860	-तथैव-

3. श्री श्यामचन्द्र मधुबनी तथैव-
 पिता-स्व० पतिचरण 350 425
 अहमदाबाद,
 जिला- वरभंगा
4. श्री रामचन्द्र मधुबनी तथैव-
 पिता-श्री रामचन्द्र मधुबनी
 ग्राम-अपनादा
 पो०-टटुवार, भाया मसंगछी
 जिला- वरभंगा ।

असैनिक शल्य चिकित्सक सह

मुख्य चिकित्सा पदाकारी, मधुबनी

ज्ञाप संख्या- 2636

मधुबनी, दिनांक 26.9.89

प्रतिलिपि :- संबंधित प्रभारी चिकित्सा पदाधिकारी को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित ।

प्रतिलिपि :- संबंधित ऐच्छिक कार्यकर्ता को सूचनार्थ प्रेषित ।

ह०/-अस्पष्ट

असैनिक शल्य चिकित्सक सह

मुख्य चिकित्सा पदाकारी, मधुबनी

Annexure-2

28

24-1-22

विद्यार्थी संस्थान में प्रवेश के लिए आवेदन।

Application for admission to the Bihar General Provident Fund

(दो प्रतियों में प्रत्येक फंडा जनरा को भेजा जाना है)

1	लेखा संख्या, जो लेखा-पदाधिकारी द्वारा आवेदन की जायगी। Account number to be mentioned by the Account Officer.	
2	आवेदक का नाम Name of applicant	श्री अशोक कुमार
3	पद का नाम Official designation	जुगलकिशोर कुमार
4	कार्यालय, जिसके सम्बद्ध है Officer to which attached.	पुलकेश्वर लाल
5	पद स्थायी है वा अस्थायी अथवा आवेदक स्थायी पद पर परीक्षा पर है। Whether post is permanent or temporary or whether applicant is on probation to a permanent post.	अस्थायी
6	यदि स्थायी या अस्थायी सेवा में है तो क्या स्थायी किये जाने की सम्भावना है? If in temporary or officiating service whether he is likely to become permanent.	स्वायत्त
7	प्रतिमास परिलब्धियों की दर Rate of emoluments per mensem.	105/-
8	प्रतिमास अंशदान की दर Rate of subscription per mensem.	150/-
9	यदि किसी अन्य फंड में अंशदान होता हो तो निधि का नाम। If subscriber to any other fund the name of such fund.	जुगलकिशोर कुमार
10	आवेदक को परिवार है कि नहीं? Whether the applicant has a family or not.	है
11	अन्य टिप्पणियाँ Remarks	

2999 2/12/22
Station: ...
Dated: 12-11-22
Signature of Applicant: श्री अशोक कुमार
Signature of the Head of the Office: ...
Designation: ...
Dated: 19

Returned with acknowledgement in duplicate form. This form should be quoted in all correspondence connected therewith. A form of nomination is returned with acknowledgement in duplicate form. I shall be filled in as soon as possible.

21

एनेक्सचर-2
पत्रांक- 81(सी)

प्राप्तक :- क्षेत्रीय उप निदेशक,

स्वास्थ्य सेवा, काशीगढ़ प्रमंडल, इलाहाबाद :

विषय : अर्थात्क शल्य चिकित्सक-सह-मुख्य कार्यवाहक अर्थात्कारी,
मधुबनी ।

विषय : नियुक्ति की वैधता एवं कार्यवाधि का लम्बित वेतन भुगतान के
संबंध में ।

महाशय,

उपर्युक्त विषयक प्रसंग में सूचित करना है कि मधुबनी जिलान्तर्गत स्वास्थ्य विभाग में पदस्थापित तृतीय एवं चतुर्थ वर्गीय कर्मचारियों से अभ्यावेदन में दर्शाया गया है कि निम्नलिखित कर्मचारी उच्च न्यायालय के फैसले सी0डब्लू0जे0सी0 10464/1993 दिनांक 22.9.94 के तहत नहीं जाते हैं, न तो हमलोगों के सेवा समाप्ति से पूर्व माननीय उच्च न्यायालय के आदेश के तहत कारण पृच्छा नहीं पृच्छा गया है साथ ही पूर्व में ये लोग न तो ऐच्छिक कार्यकर्ता ही थे ।

ऐसी परिस्थिति में संलग्न सूची वाले कर्मचारियों को कार्यवाधि का लम्बित वेतन- भत्ते का भुगतान दिया जाय तथा इनकी नियुक्ति की वैधता की जांच तक अपने पद पर बने रहेंगे । कृत कार्रवाई से अधोहस्ताक्षरी को अवगत कराया जाय ।

क्र0सं0 कर्मचारी का नाम एवं पता

पदस्थापित स्थान

1. श्री गणेश प्रसाद, स्वा0प्र0 प्रा0स्वा0केन्द्र, घोघरडीहा
2. श्री अरूण कुमार ठाकुर, बु0स्वा0दायी ,,
3. श्री रमेश भगत, पु0कक्ष सेवक ,, अति0प्रा0स्वा0केन्द्र, सिमरी विस्फा.
4. श्री राम अवतार महतो, बु0स्वा0कार्य0 प्रा0स्वा0केन्द्र मधेपुर ।

(2)

- 5. श्री हेममन्त कुमार, स्वा0 प्रा0
- 6. श्री संजीव कुमार झा, स्वा0प्रा0
- 7. श्री बलराम चौधरी, स्वा0 प्रा0
- 8. श्री इन्द्राजी सुभाष, स्वा0 प्रा0
- 9. श्री अरवि, स्वा0 प्रा0
- 10. श्री अक्षय कुमार, स्वा0प्रा0
- 11. श्री राज नारायण फादर, स्वा0प्रा0

अति0प्रा0स्वा0केन्द्र, अरुणोनी, भागलपुरी
 प्रा0प्रा0स्वा0केन्द्र, सिंगर, भागलपुरी
 प्रा0स्वा0केन्द्र, चरहीना
 प्रा0स्वा0केन्द्र, चरहीना
 प्रा0स्वा0केन्द्र, बाबू बरही

विश्वासभाजन,
 ह0/-अस्पष्ट
 24.4.96

क्षेत्रीय उप निदेशक, स्वा0सेवा,
 दरभंगा प्रमंडल, दरभंगा ।

ज्ञापिकांक लहेरिया सराय, दिनांक

प्रतिलिपि :- प्रभारी चिकित्सा पदाधिकारी, प्रा0स्वा0केन्द्र..... मधु
 पुवनी को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित ।

ह0/-अस्पष्ट
 क्षेत्रीय उप निदेशक, स्वा0सेवा,
 दरभंगा प्रमंडल, दरभंगा ।

कार्यालय असिन्कि शल्य चिकित्सा सह मुख्य चिकित्सा पदाधिकारी, मधुबनी

शापांक मधुबनी, दिनांक

प्रेषित:- प्रमारी चिकित्सा पदाधिकारी, प्राथमिक स्वा० केन्द्र अतिरिक्त प्रा०स्वा०केन्द्र, धौपरीहीहा, सिमरी (बिस्फी), मधुपुर, हरीना (बाँधीपट्टी) सिमियाँन केपाही (राजनागर), सुटीना एवं बाँहीरही ।

विषय:- नियुक्ति की कक्षा एवं कार्यावधि का लम्बित काल सुगतान के सम्बन्ध में ।

उपरोक्त विषयक क्षेत्रीय उप-निदेशक, स्वास्थ्य सेवा, दरभंगा प्रमण्डल, दरभंगा के पत्रांक ८१ गी० दिनांक २४-४-६६ (प्रति लिपि संलग्न) जी अर्गोहस्तकारी को सम्बोधित है तथा उक्त प्रति लिपि आपको दी गई है, प्रसंग में कहना है कि पत्र में संलग्न कर्मचारों के सम्बन्ध में निदेशानुसार आवश्यक कार्रवाई सुनिश्चित है एवं कृत कार्रवाई से अधोहस्ताकारी को अवगत कराये ।

अंकगणक:- ३० असिन्कि शल्य चिकित्सा सह मुख्य चिकित्सा पदाधिकारी, मधुबनी

शापांक ११२-२ मधुबनी, दिनांक ३१.२.६७

प्रति लिपि संश्लिप्त कर्मचारों को सूचनाएँ प्रेषित ।

प्रति लिपि क्षेत्रीय उप-निदेशक, स्वास्थ्य सेवा, दरभंगा प्रमण्डल, दरभंगा को उक्त पत्रांक ८१ गी० दिनांक २४-४-६६ के प्रसंग में सूचनाएँ अग्रसारित ।

श्रीम अणुनाथ महतो, धौपरीहीहा मधुबनी

असिन्कि शल्य चिकित्सा सह मुख्य चिकित्सा पदाधिकारी, मधुबनी ३१-२-६७

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एनकसचर-5

काय प्रभारी चिकित्सा पदाधिकारी

प्रा० स्वा० केन्द्र मधुपुर ।

निदेश

संख्या-..... दिनांक

क्षेत्र उप निदेशक द भांगा प्रमंडल दरभंगा के पत्रांक- 81 एवं 82 (गोपनीय) दिनांक 24. 4.96 एवं अ०श० चि० सह मुख्य चिकित्सा पदाधिकारी मधुबनी के पत्रांक- 1183 एवं 1184 दिनांक 31.05.96 के आलोक में निम्न कर्मचारियों को उनके नाम के सामने संस्थान (जहाँ पर वे पूर्व में पदस्थापित थे) पुनः अपने पद पर बने रहने की अनुमति प्रदान की जाती है।

संबंधित कर्मचारियों को निर्देशित किया जाता है कि अविलम्ब अपने पदस्थापित स्थान पर योगदान कर अधोहस्ताक्षर को सूचित करें।

क्र०सं०	कर्मचारी का नाम एवं पता	पदस्थापन स्थान
1.	श्री संजीव कुमार, स्वा०प्र०	अ०प्र०स्वा०केन्द्र बसीपट्टी
2.	श्री हेमन्त कुमार, स्वा०प्र०	,, रामाबाग चौक
3.	श्री राम अवतार, दु०स्वा०का०	स्वा० उपकेन्द्र बलौचा
4.	श्री मुहम्मद हसनैन, च०व०क०	अ०प्रा०स्वा०केन्द्र रामबाग चौक

ह०/-

प्रा०चि०पदा०

प्रा०स्वा०केन्द्र मधुपुर ।

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ज्ञापांक- 136

दिनांक 04.07.1996

प्रतिनिधि :- संबंधित कर्मचारियों को सूचनार्थ एवं अनुपालनार्थ प्रेषित ।

2. संबंधित प्रभासी त्रिकल्प पदाधिकारी, प्रा0स्वा0केन्द्र रामवाग चौक,

मधुबनी एवं चेलौचा को सूचनार्थ एवं अनुपालनार्थ प्रेषित ।

3. ज्ञापांक- 81 एवं 82

(गां0) दिनांक 24.4.96 के पालन में सूचनार्थ प्रेषित ।

4. अ0श0 वि0 सह मु0चि0पदा0 मधुबनी के ज्ञापांक- 1183 एवं 84

दिनांक 31.05.96 के आलोक पालनार्थ प्रेषित ।

5. लेखा शाखा प्रा0स्वा0केन्द्र मधुपुर ।

ह0/-

प्रा0चि0पदा0

प्रा0स्वा0केन्द्र मधुपुर ।

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एनेकसचर-6

कार्यालय अमेनिक शल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी,

मधुवने ।

आदेश

माननीय राज्य सरकार के दायर याचिका सी०डब्लू०जे०सी०एन० 1160/98, 1166/98, 1168/98, 1181/98, 1204/98, 1224/98, 1240/98, 1242/98, 1248/98, 1256/98, 1273/93, 1281/98, 1289/98, 1354/98, 1767/90, 2015/98, 2039/98, 1268/98, 1580/98, 1761/98 एवं 1784/98 में दिनांक 3.3.99 एवं दिनांक 3.5.99 को पारित आदेश के आलोक में आवेदक के आवेदन को खारिज कर दिया गया है जिससे निम्नलिखित कर्मचारी प्रभावित होते हैं :-

क्र०सं०नाम	पदनाम	पदस्थापन स्थान
1. श्री विनय कुमार झा	लिपिक	अति०प्रा०स्वा०केन्द्र
2. श्री राज नारायण पोद्दार	स्वास्थ्य प्रशिक्षक	अति०प्रा०स्वा०केन्द्र बाबूवरही
3. श्री रमेश भगत	चतुर्थवर्गीय	अति०प्रा०स्वा०केन्द्र संमरी विस्पी
4. श्री बोअन जी मिश्र	स्वास्थ्य प्रशिक्षक	अति०प्रा०स्वा०केन्द्र, भभुआ रहिका
5. श्री बलराम चौधरी	तथैव	तथैव
6. श्री हेमन्त कुमार	तथैव	तथैव
7. श्री विश्व मोहन सिंह	संगणक	प्रा०स्वा०केन्द्र
8. श्री अजय कुमार सिंह	लिपिक	अति०प्रा०स्वा०केन्द्र तेनुआही
9. श्री राजीव कुमार झा	स्वास्थ्य प्रशिक्षक	अति०प्रा०स्वा०केन्द्र

10. श्री अरूण कुमार ठाकुर बु0स्वा0कार्य प्रा0स्वा0केन्द्र घोघरडीहा
11. श्री इन्द्र कुमार ठाकुर तथैव तथैव
12. श्री विनय कुमार झा कावेरिगंगा प्रा0स्वा0केन्द्र
13. श्री अरूण कुमार राय अरूण प्रा0स्वा0केन्द्र धरमा (मधेपुर)
14. श्री प्रदीप कुमार कर्ण विहीना अति0प्रा0स्वा0केन्द्र
15. श्रीमती मिनाक्षी विहीना अति0प्रा0स्वा0केन्द्र लोहट पंडौल
16. श्री प्रभाकर मिश्र स्वास्थ्य प्रशिक्षक दरियापुर पंडौल
17. श्री रामलखन प्रसाद बु0स्वा0 कार्य0 प्रा0स्वा0केन्द्र
18. श्री गोपाल कृष्ण झा लिपिक अति0प्रा0स्वा0केन्द्र कोरहिया जयनगर
19. श्री दिलीप कुमार झा तथैव अति0प्रा0स्वा0केन्द्र मटकौड़ा बाबूबरही
20. श्री शैलेन्द्र कुमार झा तथैव अनुमंडलीय अस्पताल , मजारपुर
21. श्री राम चावू तथैव प्रस्तावित कार्यक्रम सदर अस्प0 मधुवनी
22. श्री राम औतार महता बु0स्वा0कार्या0 अति0प्रा0स्वा0केन्द्र वेंचीया मधेपुर
23. श्री पवन कुमार झा स्वास्थ्य प्रशिक्षक ,, मधेपुरा
24. श्रीमती सुनीता देवी महिला कक्ष सेविका अनुमंडलीय अस्पताल, झंझारपुर
25. श्री बेचन यादव पुरुष कक्ष सेवक प्रा0स्वाकेन्द्र लोकही
26. श्री अशोक कुमार झा तथैव ,, खजौली
27. श्री भोला मोची चतुर्थवर्गी ,, घोघरडीहा
28. श्री अखिलेश्वर प्रसाद बु0स्वा0कार्य0 ,, लौकही
29. श्री निर्मल कुमार यादव तथैव ,, पंडौल
30. श्री जय प्रकाश देव टीकाकार ,, विस्फी

31.	श्री इच्छा नन्द झा	बु0स्वा0कार्दा0	खुटौना
32.	श्री अरूण कुमार झा पृत	..	खुटौना
33.	श्रीमती कलिया देवी	म0क0मकिका असम0श्रीय	दरभंगा, झंझारपुर
	(सेवा मुक्त)		
34.	श्रीमती प्रकाश देवी	..	दरभंगा
	(सेवा मुक्त)		

2. क्रमांक 2,3,7,8, 12, 20 एवं 21 द्वारा माननीय उच्च न्यायालय में एल0पी0ए0 सं0- 563/99, 598/99, 582/99, 585/99 एवं 560/99 दायर किया गया जिसमें माननीय उच्च न्यायालय द्वारा माननीय एकल जज के आदेश पर अगले आदेश तक रोक लगा दी गई है, पूर्ण फैसले की प्रतीक्षा है। तत्काल ये लोग सेवा मुक्त आदेश से प्रभावित नहीं होंगे ।

3. क्रमांक 33 श्रीमती कलिया देवी द्वारा एल0पी0ए0 सं0- 660/99 दायर किया गया जिस पर दिनांक 3.6.99 को पारित आदेश में एनेक्सचर-1 पर रोक लगायी गई है। चूंकि ये पूर्व से ही सेवा मुक्त है इसलिए पूर्ण फैसला की प्रतीक्षा है।

4. चूंकि क्रमांक 1,9,10,11,13, 15,16,17,18,19,22,23,24,25,26,27,28 29,30 एवं 31 की नियुक्ति वर्ष 1995 में माननीय उच्च न्यायालय के आदेश के आलोक में समाप्त कर दी गई थी ।

5. माननीय उच्च न्यायालय द्वारा दिनांक 3.3.99 एवं 3.5.99 को

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पारित आदेश में आवेदन को खारिज कर दिया गया। चूंकि पारा 4 में अंकित क्रमांकों की नियुक्ति प्रोन्नति / समायोजन ऐच्छिक कार्यकर्ता से विभिन्न पदों पर नियुक्ति के मान्य एवं विहित प्रक्रिया के विरुद्ध को यदि इसलिए इन लोगों को नियुक्ति अवैध है तथा इन लोगों को सेवा भुगतान का प्रभाव से समाप्त कर दिया है।

6. क्रमांक 33 एवं 34 पूर्व से ही सेवा मुक्त है।

7. चूंकि इन लोगों की नियुक्ति अवैध है इसलिए किसी प्रकार का भुगतान उचित नहीं होगा।

8. सभी सम्बद्ध को सूचित किया जाय।

ह0/-अस्पष्ट

20.8.99

असैनिक शल्य चिकित्सक-सह-

मुख्य चिकित्सा पदाधिकारी, मधुबनी

ज्ञाप सं0- 1233

मधुबनी दिनांक 20.08.99

प्रतिलिपि :- संबंधित कर्मचारियों को सूचनार्थ एवं अनुपालनार्थ प्रेषित।

प्रतिलिपि :- जिला पदाधिकारी, मधुबनी को सूचनार्थ प्रेषित।

प्रतिलिपि कोषागार पदाधिकारी, मधुबनी एवं उपकोषागार पदाधिकारी, झंझारपुर को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

प्रतिलिपि :- निदेशक प्रमुख स्वास्थ्य सेवाएँ, बिहार, पटना को सूचनार्थ प्रेषित ।

प्रतिलिपि :- स्थायी अनुदेशक-7 उच्च न्यायालय, पटना को सूचनार्थ प्रेषित ।

प्रतिलिपि :- प्रभारी चिकित्सा पदाधिकारी, अंधराठाढी वाववरही, विस्फी, रहिका, राजनगर, पंडौल, लदनियाँ, घोघरडीहा, मधेपुर, जयनगर, लौकही, रूजौली एवं खुटौना को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित । अपने स्तर से भी संबंधित कर्मचारी का संसूचित कर देंगे ।

प्रतिलिपि :- उपाधीक्षक, अनुमंडलीय अस्पताल, झंझारपुर को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित ।

प्रतिलिपि :- वरीय चिकित्सा पदाधिकारी, पी०पी०प्रोग्राम सदर अस्पताल, मधुबनी को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित ।

प्रतिलिपि :- प्रभारी चिकित्सा पदाधिकारी, अति०प्रा०स्वा०केन्द्र गंगदार, भटचौड़, सिमरी, शंभुआर, चौड़ी, भगवानपुर, तेनुआही, भगवतीपुर, वैरमा, सिंगियौन बथाही, लोहट, हरिपुर, कोरहिया, वंलाचा, लखनौर को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित ।

ह०/-अस्पष्ट

20.8.99

असैनिक शल्य चिकित्सक-सह-
मुख्य चिकित्सा पदाधिकारी, मधुबनी

बिहार सरकार,
स्वास्थ्य विभाग ।

(31)

प्रेषक,

श्री एस०आर० अडिगे,
आयुक्त एवं सचिव ।

सेवा में,

- सभी क्षेत्रीय उप निदेशक, स्वास्थ्य सेवायें
- सभी अधीक्षक, चिकित्सा महाविद्यालय अस्पताल
- सभी प्राचार्य, चिकित्सा महाविद्यालय
- सभी असैनिक शल्य चिकित्सक-सह-मुख्य चिकित्सा पदाधिकारी
- सभी अपर मुख्य चिकित्सा पदाधिकारी
- सभी अधीक्षक, सदर अस्पताल
- निदेशक, यक्ष्मा केन्द्र, पटना/दरभंगा
- अधीक्षक, इटकी सेनितोरियम, राँची
- अधीक्षक यक्ष्मा अस्पताल, कोईलवर
- उप निदेशक, स्वास्थ्य सेवायें, यक्ष्मा नियंत्रण कार्यक्रम, बिहार, पटना
- मुख्य मलेरिया पदाधिकारी, बिहार, पटना
- सहायक निदेशक, स्वास्थ्य सेवायें, फाइलेरिया नियंत्रण, बिहार, पटना
- राज्य कुष्ठ निवारण पदाधिकारी, बिहार, पटना ।
- अधीक्षक, राज्य स्वास्थ्य भंडार, गुलजारबाग, पटना ।
- उप निदेशक, स्वास्थ्य सेवायें परिवहन।
- अधीक्षक, मानसिक आरोग्यशाला, कांके, रांची
- अधीक्षक, भेक्सीन इन्स्टीच्यूट, मागकुग, रांची
- प्रभारी चिकित्सा पदाधिकारी, ब्राम्बे, रांची
- निदेशक, लोक स्वास्थ्य संस्थान, पटना
- सभी नियुक्ति पदाधिकारी ।

पटना, दिनांक 26 जून, 1989.

विषय:-स्वास्थ्य विभाग के अन्तर्गत वर्ग 3 एवं वर्ग 4 के लगे नियुक्ति सम्बन्धी प्रतिबन्ध की वापसी

महाशय,

निदेशानुसार उपर्युक्त विषय की ओर आपका ध्यान आकृष्ट करते हुए मुझे कहना है कि सरकार को अनेक शिकायतें प्राप्त हुई थी कि क्षेत्रीय स्तर पर वर्ग 3 एवं वर्ग 4 के पदों पर नियुक्ति में बहुत अनियमिततायें बरती जा रही हैं। फलतः सरकार ने स्वास्थ्य विभाग के दूर क1द्रक संख्या 230 (5) दिनांक 14.03.89 द्वारा वर्ग 3 एवं वर्ग 4 के सभी पदों पर नियुक्तियों पर प्रतिबन्ध लगा दिया गया था।

विभाग, इतर सरकार ने सभी तथ्या एवं परिस्थितियों पर सम्यक विचारोपरान्त वर्ग 3 एवं 4 के पदों पर स्वास्थ्य विभाग द्वारा दूरमुद्रक संख्या 230 (5) दिनांक 14 मार्च, 1989 द्वारा लगाये गए प्रतिबन्ध को तत्कालिक प्रभाव से हटाने का निर्णय लिया है।

3. परन्तु, सरकार चाहती है कि जिन कारणों से नियुक्तियों पर प्रतिबन्ध लगाने को सरकार को विवश होना पड़ा था, उनकी पुनरावृत्ति न हो। अतएव, स्वास्थ्य विभाग के पत्रांक 61 (5) दिनांक 20.01.89 के क्रम में नियुक्ति पदाधिकारियों को आदेश दिया जाता है कि वे सुनिश्चित करें कि नियुक्ति करते समय अन्य निर्धारित नियमों के अलावा निम्नलिखित महत्वपूर्ण अनुदेशों का अक्षरशः पालन हो:

- (1) नियुक्ति की प्रक्रिया वही हो जो तत्कालीन मुख्य सचिव, बिहार श्री पी०पी० नैय्यर के पत्रांक 16440 दिनांक 3 दिसम्बर, 1980 एवं पत्रांक 16441 दिनांक 3 दिसम्बर, 1980 में निर्धारित की गई है (प्रतिलिपि संलग्न)।
- (2) अनुसूचित जाति/अनुसूचित जन जाति तथा अन्य आरक्षित वर्गों के लिये रोस्टर बिन्दु के आधार पर सभी परिचारित नियमों एवं अनुदेशों का पालन किया जाय। इस सन्दर्भ में उपर्युक्त कोटि के आरक्षित वर्गों के लिए आरक्षित तथा कर्णांकित पदों पर नियुक्ति करने में प्रधानता दी जाय।
- (3) सभी नियुक्ति पदाधिकारी नियुक्ति की कार्रवाई करने के पूर्व सभी कोटि की उपलब्ध रिक्तियाँ की गणना कर पूरी सूची, कोटिवार, निदेशक-प्रमुख को उपलब्ध करायेंगे।
- (4) वर्ग 3 की सभी रिक्तियों को मुख्य सचिव के पत्रांक 16440 दिनांक 03.12.80 में निर्धारित प्रक्रिया के अनुसार स्थानीय नियोजनालय को अधिसूचित किया जाय और स्थानीय नियोजनालय के माध्यम से डी रिक्तियों के अनुपात में नामों की सूची मांगी जाय जिसमें रोस्टर बिन्दु के अनुसार विभिन्न आरक्षित वर्गों की रिक्तियों का स्पष्ट संकेत अवश्य किया जाय।
- (5) वर्ग 4 की सभी रिक्तियों को मुख्य सचिव के परिपत्र संख्या 16441 दिनांक 03.12.80 में निर्धारित प्रक्रिया के अनुसार सम्बन्धित विभागाधिकारी को सूचित करते हुए नियुक्ति हेतु उम्मीदवारों की सूची मांगी जाए। सूची मांगते समय रोस्टर बिन्दु के अनुसार सभी आरक्षित वर्गों की रिक्तियों का भी संकेत किया जाना आवश्यक होगा।
- (6) नियुक्ति निर्धारित प्रक्रिया के अनुसार गठित चयन समितियों के माध्यम से ही की जाय। इस चयन समिति का गठन श्री पी०पी० नैय्यर के उपर्युक्त परिपत्र में निर्धारित प्रक्रिया के अनुसार हो, जिसमें आरक्षित वर्ग/अल्प संख्यक समुदाय/ महिलाओं को उचित

प्रतिनिधित्व हो तथा इससे भिन्न रूप से गठित कोई भी चयन समिति अधिकृत नहीं समझी जायेगी।

- (7) नियुक्ति करते समय छंटनीग्रस्त कर्मचारियों/पहले से दैनिक मास्टर रॉल पर कार्यरत कर्मचारियों को उनकी योग्यता के अनुसार समुचित अवसर प्रदान किया जाय वशर्ते वे सम्बन्धित जिले के नियोजनालय में निबंधित हों तथा अन्य शर्तों को भी पूरा करते हों। यदि ऐसे छंटनीग्रस्त कर्मचारियों की सरकारी सेवा में प्रवेश की उम्र सीमा समाप्त हो गई हो तो विशेष परिस्थिति में सभी तथ्यों का उल्लेख करते हुए उनकी आयु-क्षान्ति पर नियमानुसार विचार हो।
 - (8) यहां यह स्पष्ट कर दिया जाता है कि फिलहाल मात्र योजना मंद के अन्तर्गत आने वाले पदों की रिक्तियों को ही भरा जायेगा क्योंकि गैर-योजना मंद के पदों पर बहाली करने पर सरकार द्वारा सामान्य प्रतिबन्ध लागू है। यदि आसाधारण परिस्थिति में कार्यक्रमों के संचालन के हित में कतिपय गैर योजना मंद के पदों को भरा जाना अपरिहार्य समझा जाता है तो विशेष परिस्थितियों में विशेष कारणों का उल्लेख करते हुए सम्बन्धित नियुक्ति पदाधिकारी अपना प्रस्ताव, पूर्ण औचित्य के साथ स्वास्थ्य विभाग को भेजें ताकि वित्त विभाग की पूर्व सहमति प्राप्त कर गैर योजना मंद के पदों की रिक्तियों को भरने का आदेश दिया जा सके।
 - (9) सरकार चाहती है कि नियुक्ति के लिए परिगठित चयन समिति द्वारा तैयार किए गए पैनल तथा समिति के सभी सदस्यों द्वारा हस्ताक्षरित कार्यवाही की प्रति पूर्ण विवरण के साथ निर्गत करने के दिन ही निदेश प्रमुख को विशेष दूत द्वारा उपलब्ध करा दिया जाए। इसके अलावा, नियोजनालय तथा जिला पदाधिकारी को भेजे जाने वाले अभियाचना-पत्रों की प्रतियां भी निदेशक-प्रमाण प्रमुख को अवश्य भेजी जाय।
- (10) निम्नलिखित कोटि के पदों पर नियुक्ति निर्देशालय स्तर पर निदेशक-प्रमुख के लिखित अनुमोदनोपरान्त की जायेगी:
- (क) एक्सरे टेक्नीशियन
 - (ख) नर्स ग्रेड 'ए'
 - (ग) लैबोरेटरी टेक्नीशियन
 - (घ) यक्ष्मा स्वास्थ्य परिदर्शिका
 - (ङ.) फिजियोथेरापिस्ट
 - (च) ऑकुपेशनल थेरेपिस्ट
 - (छ) चक्षु सहायक

4. सरकार स्पष्ट कर देना चाहती है कि सभी नियुक्तियाँ नियमानुकूल तथा समय-समय पर निर्गत किये गये अनुदेशों/आदेशों में निर्धारित प्रक्रिया के अनुसार ही की जानी चाहिए और यदि नियमों तथा अनुदेशों का अक्षरशः पालन नहीं होता है तो न केवल यह नियुक्ति अवैध मानी जायेगी बल्कि नियमों की अवहेलना करने वाले नियुक्ति पदाधिकारियों के विरुद्ध कठोर अनुशासनिक कार्रवाई की जायेगी। नियुक्ति पदाधिकारी को यह व्यक्तिगत जिम्मेवारी होगी कि वे सुनिश्चित करें कि वर्ग 3 एवं 4 की सभी नियुक्तियों में सरकारी नियमों तथा अनुदेशों का अक्षरशः पालन होता है।
5. सरकार ने जनहित में वर्ग 3 एवं 4 की नियुक्ति पर लगाये गये प्रतिबंध को उठाया है और फलतः सरकार अपेक्षा करती है कि सभी नियुक्ति पदाधिकारी अपना नैतिक कर्तव्य मानें कि सरकार द्वारा निर्धारित प्रक्रिया का अक्षरशः पालन हो। सरकार कुछ समय के उपरान्त स्थिति की समीक्षा करना चाहेगी कि किस हद तक नियमों का पालन तथा सरकार की अपेक्षाओं की पूर्ति होती है।
6. इस पत्र की अलग प्रति निदेशक-प्रमुख, स्वास्थ्य सेवाएँ/प्रमंडलीय आयुक्तों एवं जिला पदाधिकारियों को दी जाती है।
7. इस पत्र की प्राप्ति स्वीकार करें।

विश्वासभाजन,
ह०/- अस्पष्ट
(एस०आर०अडिगे)
आयुक्त एवं सचिव

ज्ञापांक 574(5) स्वा०, पटना, दिनांक 26 जून, 1989

प्रतिलिपि:- निदेशक-प्रमुख, स्वास्थ्य सेवाएँ/सभी प्रमंडलीय आयुक्त/सभी जिला पदाधिकारियों को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

विश्वासभाजन,
ह०/- अस्पष्ट
(एस०आर०अडिगे)
आयुक्त एवं सचिव

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Annexure-8

IN THE HIGH COURT OF JUDICATURE AT PATNA
C.W.J.C. No.6431 of 2009
RAMAKANT SHARMA
Versus
THE STATE OF BIHAR & ORS
With

C.W.J.C. No.6422 of 2009
BRAJ NANDAN ROY @ BRIJ NANDAN
Versus
THE STATE OF BIHAR & ORS

2. 20.5.2009

Heard learned counsel for the petitioner and the State.

It is submitted that the petitioner in C.W.J.C. No. 6431 of 2009 was appointed by the Civil Surgeon-cum-Chief Medical officer, Gaya in a regular pay scale on 20.5.1987 on the post of Ward Attendant. He was then transferred from one place to another in normal course of duties. After making up their minds in pursuance of a purported enquiry that the appointment of the petitioner was illegal, the formality of a show cause notice was fulfilled when the respondents issued notice to the petitioner by requiring to submit his response to the decision already taken by the respondents. No reasons why the respondents questioned the appointment was stated in the show cause notice. The petitioner filed his reply. He also annexed an enquiry report of the Additional Collector, Gaya dated 18.11.2000 that the appointment of the petitioner was legal. The respondents issued a show cause notice on 22.5.2003 in a very short time without giving the petitioner and grounds of alleged illegal appointment. The respondents filled in the blanks.

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2009

The petitioner replied to the same again. His services were terminated under Law 7 of 2003. The petitioner questioned the same in C.W.J.C. No. 7197 of 2003. The order of termination was stayed by this Court on

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6.8.2003. The petitioner rejoined duties. The writ petition finally came to be disposed on 8.9.2003 along with C.W.J.C. No. 4702 of 2003 and analogous. This was questioned by the respondents in L.P.A. No. 133 of 2003 which was heard and disposed on 26.6.2006 along with L.P.A. No. 946 of 2003 and analogous cases directing the respondents to constitute a committee and to scrutinize the appointments.

The report of the committee followed. It classified him as an illegal appointee on the ground that the enquiry committee did not find any documents with regard to him. Learned counsel for the petitioner submits that the petitioner was appointed in 1987. In an enquiry by the Additional Collector in 2000, his appointment has been held to be valid. Years later in 2003 his appointment was terminated which was set aside by this Court. The arbitrariness in the action of the respondents is writ large from the fact that the petitioner had duly submitted replies to the earlier show cause notices and drawn the attention of the respondents to his appointment papers and earlier enquiry report. In C.W.J.C. No. 4702 of 2003 at page 11 of the judgment the Bench of this Court observed as follows:-

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"In no case, it is held out by learned counsel appearing on behalf of the State that appropriate action was taken by the State authority, who made an appointment, to allow the appointees to continue in service on the given facts and circumstances. The beneficiaries and the authorities concerned in such benefits are equally entitled to demand and invalid appointments and the appointments are bound to be invalid after lapse of a period. Such appointments, in my opinion, should be set on equitable consideration."

The Division Bench in L.P.A. No. 946 of 2003 did not set aside

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the order of the Bench. The order of the Bench therefore merged into the order of the Division Bench.

This Court has considered the effect of the merger of orders in several such matters including the order dated 18.4.2009 in C.W.J.C. No. 4872 of 2009.

This Court in its orders with regard to such matters has observed that the respondents were virtually creating an industry of appointment and termination. An officer appoints and goes away. Another officer comes and seeks to reopen the appointment and when he is satisfied he closes it again. The issues are then sought to be reopened by a 3rd officer. In this manner a person who has continued in service for, may be, 16 or more years is kept the demerit sword hanging over his head. The Ward Attendant, a Class IV employee, is a soft target for the powerful officials. Someone in the establishment stands to gain by keeping such matters alive and raking up the issue time and again.

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Suffice it to say that the Division Bench did not issue any mandamus not to issue individual notices but only to issue a paper notice.

not

All that was contained in the order was an advisory for the respondents to decide. If the respondents for reasons of their own convenience opted for the easy way out, they issued such individual notices without any explanation for his conduct. The petitioner has no hesitation in holding that the petitioner was not heard. The respondents were required to issue individual notices and give him full opportunity to defend himself. His employment was at stake, in fact, his whole world including that of his family was at stake. The impugned report does not even

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mention the date and the name of the newspaper with regard to the alleged paper notice published. Additionally this Court has already held that since the order of the writ Court had merged in the order of the Appellate Court, the directions of the writ Court with regard to enquiry against those who made the illegal appointment was simultaneously required to be the subject matter of examination by the committee which was examining the petitioner's appointment. The standard by which the respondents profess to act in terminating the appointment of the petitioner as illegal, is the same standard by which this Court shall hold them to be bound by meeting out equal treatment to those who made such appointments.

The respondents cannot be permitted to adopt a partition approach victimizing the petitioner while seeking to protect their own officers. Issues of salary paid to the petitioner from the Government coffers if he was an illegal appointee and recovery of the same from those who appointed him will also arise.

The impugned order in its present form both on the issue of natural justice and the partisan approach of the respondents at Annexure-11 is therefore not sustainable. It is accordingly set aside. The petitioner stands reinstated.

Relief is granted to the respondents, if they so desire, to be taken against the petitioner, but this has to be done strictly in accordance with the law hereinabove.

C.W.J.C. No. 6422 of 2009

In this case the petitioner was appointed by the Chief Medical Officer on 20.3.87 as a Basic Health Worker in a regular pay scale. He

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was transferred from one place to another. His salary was stopped and after verification of the appointment salary was released in the year 1995 itself. He was then issued a show cause notice on 2.8.1999 to give reply and termination followed on 16.11.2002. He came to this Court in C.W.J.C. No. 473 of 2003. While the writ petition was pending, a fresh termination order was issued on 4.3.2003. He questioned the same again in C.W.J.C. No. 4154 of 2003. This was also disposed along with C.W.J.C. No. 4702 of 2003 when in like manner of the Division Bench in L.P.A. No. 946 of 2003 remanded the matter for examination by a committee which classified him as regularized from daily wages but not by the competent authority, and therefore an illegal appointee. The enquiry held by the respondents suffers from the same infirmities as noticed in C.W.J.C. No. 6431 of 2009. The information furnished to the petitioner dated 5.4.2008 under the right to information act confirms that the petitioner was regularized by the orders of the Directorate of Health.

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The writ application is therefore also, for like reasons as discussed hereinabove disposed of in similar terms setting aside the impugned order of termination of the petitioner with consequential reinstatement and liberty to the respondents to proceed afresh in the manner as directed above.

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Annexure-9

IN THE HIGH COURT OF JUDICATURE AT PATNA
LPA No.1748 of 2010

- 1. The State of Bihar, through the Director-in-Chief, Health Services, Bihar, Patna.
 - 2. The Regional Deputy Director, Health Services, Darbhanga Division, Darbhanga.
 - 3. The Civil Surgeon-cum-Chief Medical Officer, Madhubani.
 - 4. The In-charge Medical Officer, Additional Primary Health Centre, Lakhsaur, Madhepur, Madhubani.
- Appellants/Respondents.

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Versus

Pawan Kumar Jha, Aged about 45 Years, Son of Kamal Kant Jha, R/O Village- Kabipur, P.S.- Lehariasarai, Distt- Darbhanga, Presently posted as Health Educator, Additional Primary Health Centre, Lakhsaur, Madhubani.

.....Respondent/Petitioner.

4/ 14.07.2011

This Letters Patent Appeal has been filed against the Judgment passed on 12.11.2009 by the learned Single Judge in C.W.J.C. No. 9661 of 2009, by which the learned Single Judge has set aside the termination order relying on the case of Secretary, State of Karnataka Vs. Uma Devi and Ors. reported in 2006(2)P.L.J.R.(SC)363, and considered by the Apex Court in the case of State of Karnataka & Ors Vs. M.L. Kesari & Ors reported in (2010) 9 SCC 247. In paragraph 11 of the Judgment, the Apex Court has observed as follows:-

..... the fact that behind the said order, the State of Karnataka is two-fold. The fact is that

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those who have put in more than ten years of continuous service without the protection of any interim orders of court or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments instrumentalities do not perpetuate the practice of employing persons on daily wage/ ad hoc/ casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.07.2006 (the date of decision in Umadevi) without

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the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above direction in Umadevi as a one time measure."

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In view of the above law laid down, the order of termination of the petitioner is illegal. Admittedly, the petitioner has completed more than ten years of his service, as against the vacant post, appointed by the competent authority and was paid salary and was also given promotion and regularization of service and confirmation. He

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appointment cannot be said to be illegal, which differs from irregular appointment. The appointment of the petitioner also cannot be said to be irregular and as per law laid down in Uma Devi Case in para 53 and M.L. Keshri's case. The petitioner was fully entitled for regularization of his service, therefore, his termination is bad in law.

The learned Single Judge has rightly allowed the writ petition and set aside the termination order. The petitioner shall be reinstated forthwith and salary shall be paid month to month regularly and arrears of salary shall be paid within four months. We fully agree with the Judgment of the learned Single Judge. For the reasons recorded above, the appeal is devoid of merit.

Accordingly, this L.P.A. is dismissed.

(Pradyoti Chandra Verma, J.)

Bhardwaj

(Ajay Kumar Invedi, J.)

Annexure-10

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कार्यालय, असेैनिक शल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी, मधुबनी।

आदेश

पत्रांक : 1080/ दिनांक 26.4.12

सी०डब्लू०जे०सी० संख्या-7669/09 श्री उमेश्वर प्रसाद बनाम राज्य सरकार एवं अन्य में माननीय उच्च न्यायालय द्वारा दिनांक 06.10.09 को पारित आदेश, एल०पी०ए० संख्या-552/10 श्री उमेश्वर प्रसाद बनाम राज्य सरकार एवं अन्य में माननीय उच्च न्यायालय द्वारा दिनांक 20.06.11 को पारित आदेश तथा एम०जे०सी० संख्या-4199/11 श्री उमेश्वर प्रसाद बनाम राज्य सरकार एवं अन्य में दिनांक 19.03.12 को माननीय उच्च न्यायालय द्वारा पारित आदेश के अनुपालन में श्री उमेश्वर प्रसाद द्वारा समर्पित शपथ-पत्र के आलोक में श्री उमेश्वर प्रसाद सम्प्रति सेवामुक्त स्वा० प्रशिक्षक, प्राथमिक स्वा० केन्द्र, हरलाखी, मधुबनी को पुनर्नियोजित किया जाता है।

माननीय न्यायालय द्वारा विपरीत न्यायादेश प्राप्त होने की स्थिति में यह आदेश उक्त न्यायादेश से प्रभावित होगा।



डा० सुधीर कुमार सिन्हा

असेैनिक शल्य चिकित्सक सह,

मुख्य चिकित्सा पदाधिकारी, मधुबनी।

ज्ञापांक : 1080 / मधुबनी, दिनांक.....26.4.12

प्रतिलिपि : श्री उमेश्वर प्रसाद, स्वा० प्रशिक्षक को सूचनार्थ प्रेषित।

प्रतिलिपि : प्रभारी चिकित्सा पदाधिकारी, प्राथमिक स्वा० केन्द्र, हरलाखी, मधुबनी को सूचनार्थ एवं आवश्यक कार्यवाई हेतु प्रेषित एवं उन्हें आदेशित है कि यदि वहाँ रिक्त पद न हो तो अविलम्ब योगदान स्वीकृत करते हुए सूचना देंगे ताकि इनकी पदस्थापना अन्यत्र की जा सके।

प्रतिलिपि : निदेशक प्रमुख, स्वास्थ्य सेवाएँ, बिहार, पटना को इस कार्यालय के पत्रांक 945 दिनांक 10.04.12 के क्रम में सूचनार्थ एवं अनुमोदनार्थ प्रेषित।



डा० सुधीर कुमार सिन्हा

असेैनिक शल्य चिकित्सक सह,

मुख्य चिकित्सा पदाधिकारी, मधुबनी।

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.16518 of 2009
1. RAM AWTAR MAHTO S/O LATE RAGHUBIR MAHTO,
R/O VILL- AMTAHI, P.S- MANIGACHHI, DISTT-
DARBHANGA.PETITIONER.

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY, HEALTH
DEPARTMENT, BIHAR, PATNA.
3. THE DIRECTOR IN-CHIEF, HEALTH SERVICES,
BIHAR, PATNA.
4. THE CIVIL SURGEON-CUM-CHIEF MEDICAL
OFFICER, MADHUBANI.
5. THE INCHARGE MEDICAL OFFICER, PRIMARY
HEALTH CENTRE, MADHEPUR, DISTT- MADHUBANI.
.....RESPONDENTS.

2 22.03.2010

Petitioner was terminated in 1999. He
has moved this Court on 30.11.2009 i.e. after
ten years.

The writ application is dismissed only
on the ground of delay and laches.

If the petitioner has any remedy
available in law, he may pursue it.

Arvind/

(J. N. Singh, J.)

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