

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1138 of 2024
In
Civil Writ Jurisdiction Case No.6028 of 2022

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1. The State of Bihar, through, The Principal Secretary, Department of Health, Government of Bihar, Patna.
 2. The Director-in-Chief (Disease Control, Public Health, Para- Medicals) Health Services, Bihar, Patna.
 3. The Civil Surgeon-cum-Chief Medical Officer, Aurangabad.
 4. The Incharge Medical Officer, Primary Health Centre, Nabinagar, Aurangabad.
 5. The Incharge Medical Officer, Primary Health Centre, Goh, Aurangabad.
 6. The District Provident Fund Officer, Aurangabad.
 7. The Treasury Officer, Aurangabad.

... .. Appellant/s

Versus

Upendra Sharma, Son of - Sri Ram Swaroop Singh, Resident of Village - Raily, P.O. + P.S. - Belagunj, District- Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Advocate General Mr. Kinkar Kumar, SC-9 Mr. Sushant Praveer, AC to sc-9 Mr. Yogesh Kumar, AC to SC-9
For the Respondent/s	:	Mr. Shiv Kumar, Advocate Ms. Sweta Burnwal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-08-2025

The present Letters Patent Appeal has been filed by the appellants/original respondents under provisions of Clause 10 of the Letters Patent of the Patna High Court Rules. In the present appeal, the appellants have challenged the judgment dated 03.09.2024 passed by learned Single Judge in CWJC No.



6028 of 2022, by which the learned Single Judge has disposed of the writ petition directing the appellants herein to ensure payment of GPF amount along with up-to-date interest as well as Group Insurance Amount to the respondent/original writ-petitioner within the stipulated time.

2. Factual matrix in the present case is as under:-

2.1. The present respondent is the original writ-petitioner who had preferred the captioned writ petition before this Court. In the said writ petition, the writ-petitioner has mainly contended that the respondent/original writ-petitioner was provisionally appointed to the post of Health Servant by order dated 07.07.1989 under the signature of Regional Director, Health Service, Magadh Division, Gaya. The service of the respondent/original writ-petitioner was confirmed vide order dated 09.06.1994 under the signature of Civil Surgeon-cum-Chief Medical Officer, Aurangabad. Thereafter, respondent/original writ-petitioner was posted in the Primary Health Centre, Madanpur, Aurangabad. However, after a period of 14 years from the date of his appointment, his services came to be terminated vide order dated 28.06.2003 under the signature of Civil Surgeon-cum-Chief Medical Officer, Aurangabad. It is the case of the respondent/original writ-



petitioner that his services were terminated without following due procedure of law and by violating Article 311 (2) of the Constitution of India. Respondent/original writ-petitioner, therefore, challenged the said action of the State by filing CWJC No. 8083 of 2003 before this Court. It is further stated by the respondent/original writ-petitioner that the petition filed by the respondent/original writ-petitioner was finally heard along with other similar type of matters filed by similarly situated employees and the said matters were disposed of vide common order dated 08.09.2003. Writ petitions were allowed by the learned Single Judge and thereafter the respondent/original writ-petitioner was reinstated in service.

2.2. It is further the case of the respondent/original writ-petitioner that thereafter service of the respondent/original writ-petitioner was again terminated along with others by referring to the order passed in LPA No. 969 of 2003, wherein the respondent/original writ-petitioner was not party. Ultimately, this Court passed an order in LPA No. 1202 of 2010 preferred by the State, which was allowed vide order dated 24.09.2014 and thereafter the respondent/original writ-petitioner was again terminated vide order dated 10.10.2014. The respondent/original writ-petitioner thereafter preferred SLP(C) No. 29306 of 2014



before the Hon'ble Supreme Court against the order dated 24.09.2014 passed in LPA No. 1202 of 2010. It is further stated in Paragraph 20 of the memo of the petition that the Special Leave Petition filed by the respondent/original writ-petitioner was decided against the respondent/original writ-petitioner by the Hon'ble Supreme Court along with other matters by order dated 17.10.2019 passed in Civil Appeal No. 7879 of 2019 and allied matters.

2.3. In the aforesaid background of the litigation, now the respondent/original writ-petitioner has filed the captioned petition in which it has been stated that the respondent/original writ-petitioner is entitled to get statutory benefit of Group Insurance and General Provident Fund pursuant to letter bearing Memo No. 571(4) dated 01.07.2020 issued under the signature of Director-in-Chief (Disease Control, Public Health Para Medicals) Health Services, Bihar. The grievance of the respondent/original writ-petitioner in the writ petition was that though the respondent/original writ-petitioner is entitled to get the statutory benefit of GPF as well as Group Insurance, the said benefits were denied to him, whereas similar type of benefits were given to the other similarly situated persons who were also petitioner before the Hon'ble Supreme Court.



Respondent/original writ-petitioner has, therefore, prayed that the respondents be directed to immediately pay Group Insurance and General Provident Fund amount to the respondent/original writ-petitioner in light of letter bearing Memo No. 571(4) dated 01.07.2020. Respondent/original writ-petitioner also prayed that the appellants/original respondents be directed to pay salary to the respondent/original writ-petitioner for the period between 11.10.2003 to 08.11.2003 and 01.11.2019 to 06.01.2020. The respondent/original writ-petitioner has also prayed that the appellants/original respondents be directed to pay the pension, gratuity and Leave Encashment to the respondent/original writ-petitioner.

2.4. The learned Single Judge vide impugned order dated 03.09.2024 disposed of the writ petition filed by the respondent/original writ-petitioner by directing the original respondents/present appellants to ensure payment of GPF amount along with up-to-date interest as well as Group Insurance amount within a period of six weeks from the date of passing of the said order to the respondent/original writ-petitioner.

2.5. Original respondents have, therefore, filed the present Letters Patent Appeal.



3. Heard Mr. P.K. Shahi, learned Advocate General assisted by Mr. Kinkar Kumar, learned Standing Counsel No. 9, Mr. Yogesh Kumar and Mr. Sushant Praveer, learned counsels appearing on behalf of the appellants/original respondents and Mr. Shiv Kumar assisted by Ms. Sweta Burnwal, learned Advocates for the respondent/original writ-petitioner.

4. Learned Advocate General appearing on behalf of the appellants/original respondents has assailed the impugned order passed by the learned Single Judge mainly on the ground that the Special Leave Petition filed by the respondent/original writ-petitioner was dismissed whereas the SLPs filed by the State Government have been allowed by the Hon'ble Supreme Court and a common order has been passed by the Hon'ble Supreme Court on 17th October, 2019. The said decision has been rendered in the case of ***State of Bihar and Others vs. Devendra Sharma***, reported in ***(2020) 15 SCC 466***. Learned Advocate General would mainly refer to Paragraphs- 35 and 36 of the said decision and contend that the Hon'ble Supreme Court, in no uncertain terms, has specifically observed that the rights, including the right to salary and other statutory entitlement for salary or consequential rights of pension and other monetary benefits arising out of the illegal appointment



cannot be granted. Learned Advocate General, therefore, urged that the Hon'ble Supreme Court has specifically observed that other monetary benefits as well as statutory benefits cannot be granted to the persons whose appointment was made on the basis of forged, fraudulent document(s) or the appointment is illegal.

5. Learned Advocate General would thereafter contend that in the present case, the respondent/original writ-petitioner has placed reliance upon certain orders passed in favour of similarly situated persons whereby similarly situated persons were granted benefit of GPF as well as Group Insurance, but it has been contended that even if some wrong interpretation has been made by the officer of the Government and benefit has been wrongly given to some of the employees, the similar type of benefit cannot be granted to the respondent/original writ-petitioner and Article 14 of the Constitution of India would not be applicable in negative way. Learned Advocate General has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Basawaraj and Another vs. Special Land Acquisition Officer*, reported in (2013) 14 SCC 81 as well as the decision rendered in the case of *R. Muthukumar and Others vs. Chairman and*



Managing Director TANGEDCO and Others, reported in **2022 SCC OnLine SC 151**, in support of his contention.

6. Learned Advocate General, therefore, urged that the learned Single Judge has committed grave error while relying upon the benefit given to the other similarly situated persons and thereby granting similar type of benefit of GPF as well as Group Insurance to the respondent/original writ-petitioner. Learned Advocate General, therefore, urged that the present appeal be allowed and the impugned order passed by the learned Single Judge be set aside. At this stage, learned Advocate General further submits that it is not open for this Court to clarify the order passed by the Hon'ble Supreme Court, and more particularly Paragraph 36 of the decision rendered in the case of ***Devendra Sharma*** (supra).

7. On the other hand, learned Advocate appearing on behalf of the respondent/original writ-petitioner has vehemently opposed the present appeal. At the outset, learned counsel would mainly submit that learned Single Judge has not committed any error while passing the impugned order, and more particularly when the learned Single Judge allowed the writ petition on the ground that the appellants/original respondents have granted similar type of benefits to other similarly situated persons who



were also party before the Hon'ble Supreme Court in the case of ***Devendra Sharma*** (supra). Learned counsel, therefore, urged that the present appeal be dismissed.

8. Learned counsel for the respondent/original writ-petitioner further submits that Bihar Treasury Code, 2011, more particularly Rule 371 (b), provides that the Provident Fund amount is to be given to the employee even if he has resigned or has been dismissed from service. The language of the statute is very clear and there is no ambiguity in Rule 371(b) of the Bihar Treasury Code, 2011. At this stage, learned counsel has also referred to Rule 12 of Bihar Government Servant's Compulsory Group Insurance Rules, 1994. It is submitted that as per Rule 12 of the Rules of 1994, the respondent/original writ-petitioner is also entitled to get the benefit of Group Insurance, despite which the said benefit has been denied to the respondent/original writ-petitioner. At this stage, learned counsel has referred to letter bearing Memo No. 571(4) dated 01.07.2020 issued by the concerned respondent authority. It is submitted that as per the said order/letter dated 01.07.2020 issued by the concerned respondent authority, the respondent/original writ-petitioner is entitled to get the Provident Fund and Group Insurance amounts, which are



statutory benefits. However, when the said benefits were denied to the respondent/original writ-petitioner, he filed the captioned writ petition and, therefore, the learned Single Judge has not committed any error while granting the aforesaid statutory benefits in favour of the respondent/original writ-petitioner.

9. Learned counsel, at this stage, has placed reliance upon decision rendered by the Hon'ble Supreme Court in the case of *Indore Development Authority vs. Shailendra (Dead) thr. Lrs. & Ors.*, reported in *2018 (1) PLJR (SC) 396*. Learned counsel has more particularly referred to Paragraphs 41(a) and 41(b) of the said decision.

10. Learned counsel would thereafter refer to the decision rendered by the Hon'ble Supreme Court in the case of *P. Gopalkrishnan @ Dileep vs. State of Kerala and Anr.*, reported in *2020 (1) PLJR (SC) 67*. Learned counsel mainly referred to and relied upon the observation made in Paragraph 17 of the said decision. At this stage, learned counsel also referred to the decision rendered in the case of *Dr. (Major) Meeta Sahai vs. State of Bihar & Ors.*, reported in *2020 (1) PLJR (SC) 237*. Learned counsel has relied upon Paragraphs 21 and 22 of the said decision.

11. After referring to the aforesaid, it is contended that



when the statute is clear and there is no ambiguity in the language of the statute, the benefit of the same is required to be given to the concerned person/employee and there is no question of interpretation of such a statute by the High Court.

12. Learned counsel for the respondent/original writ-petitioner thereafter contended that the appellant/State Government has framed the litigation policy. Learned counsel has referred to Clause 4C(1) of the Bihar State Litigation Policy, 2011. The same is reproduced in **2011 (2) PLJR 14 (Statutes)**. The said clause provides policy with regard to the Covered Matters. Learned counsel, therefore, submits that it is the policy of the State Government that if the decision has been taken by the State Government by accepting the order passed by the Court and thereafter benefit is given pursuant to the order of the Court to some of the employees, similar type of benefits are required to be given to the similarly situated persons. However, in the present case, the appellants/original respondents did not grant any benefit to the respondent/original writ-petitioner and, therefore, learned Single Judge has rightly directed the appellants/original respondent authorities to grant similar type of statutory benefit to the respondent/original writ-petitioner.

13. Learned counsel has placed reliance upon the



decision rendered by Full Bench of this Court in the case of *Amresh Kumar Singh vs. The State of Bihar & Anr.*, reported in *2018 (2) PLJR 929*, and more particularly Paragraph 8 of the said decision, in support of his aforesaid contention. Learned counsel has also referred to and relied upon the decision rendered in the case of *State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others*, reported in *(2015) 1 SCC 347*. Learned counsel has relied upon Paragraph 22.1 of the said decision.

14. After referring to the aforesaid decision, learned counsel would mainly submit that it is not open for the appellants/original respondents to discriminate the similarly situated employees and the State may not grant benefit in favour of some of the employees and deny the similar benefit to the other set of employees. Learned counsel, therefore, urged that when the learned Single Judge has not committed any error while passing the impugned order, the present appeal be dismissed.

15. We have considered the submissions canvassed by learned Advocates appearing on behalf of the parties and also perused the materials placed on record and the decisions upon which reliance has been placed by learned counsel appearing for



the parties. We have also gone through the statutory provisions upon which reliance is placed by learned counsel for the respondent/original writ-petitioner.

16. From the record, it would emerge that the services of the respondent/original writ-petitioner came to be terminated and the matter went up to the Hon'ble Supreme Court. Respondent/original writ-petitioner himself has stated in the memo of the writ petition that against the order passed by Division Bench of this Court, respondent/original writ-petitioner preferred Special Leave Petition before the Hon'ble Supreme Court and the said Special Leave Petition filed by the respondent/original writ-petitioner was heard along with Civil Appeal No. 7879 of 2019 and analogous cases filed by the State Government and thereafter the Hon'ble Supreme Court has passed common order in the case of **Devendra Sharma** (supra). We have gone through the decision rendered by the Hon'ble Supreme Court in the case of **Devendra Sharma** (supra). In Paragraphs 35 and 36 of the said decision, the Hon'ble Supreme Court has observed as under:-

“35. Lastly, it is argued that employees have been working for many years, some for more than 25 years, therefore, humanitarian view should be taken to set aside the order of



termination and regularise their services so as to make them entitled to pension and other retirement benefits.

36. We do not find any merit in the said argument. A Full Bench of the High Court in Rita Mishra v. Director, Primary Education [1987 SCC OnLine Pat 159 : AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701] while dealing with appointment in the Education Department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary stricto sensu springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.”

17. From the aforesaid observation made by the



Hon'ble Supreme Court, it is revealed that the Hon'ble Supreme Court has in clear terms observed that right to salary springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The Hon'ble Supreme Court has further observed that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is *non est* in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.

17.1. Keeping in view the aforesaid observations made by the Hon'ble Supreme Court in the case of respondent/original writ-petitioner himself, if the submissions canvassed by learned counsel appearing on behalf of the respondent/original writ-petitioner are examined, it transpires that the learned counsel appearing on behalf of the respondent/original writ-petitioner has mainly contended that GPF as well as Group Insurance benefits are statutory benefits



and, therefore, once the language of the statute is unambiguous/clear, no interpretation thereof is required. We are of the view that aforesaid contention of learned counsel for the respondent/original writ-petitioner is misconceived in the facts and circumstances of the present case. In the case of respondent/original writ-petitioner himself, the Hon'ble Supreme Court has made the aforesaid observation in Paragraph-36. It is not open for this Court to interpret aforesaid paragraph and thereafter grant benefit in favour of respondent/original writ-petitioner.

18. Another submission canvassed by learned counsel appearing for the respondent/original writ-petitioner is that the appellants/original respondents have granted similar type of statutory benefit to other similarly situated persons who were also party before the Hon'ble Supreme Court in the case of ***Devendra Sharma*** (supra). Learned counsel has referred to the order passed by the appellant/respondent authority in favour of similar type of employees, copy of which is placed on record at Page-131 of the compilation of the writ petition. The respondent/original writ-petitioner also made averment in the memo of petition wherein he has pointed out the name of other similarly situated persons. However, at the same time, it is



required to be observed that the appellant/State has denied similar type of benefit to similarly situated person, copy of which is produced on record with I.A. No. 03 of 2025 filed in the Letters Patent Appeal. Annexure-P/2 of I.A. No. 03 of 2025 is the order passed in the case of similarly situated person, whereby similar type of benefit has been denied to him.

19. Thus, the gist of the submission of learned counsel for the respondent/original writ-petitioner is that the State has granted statutory benefit to some of the employees but denied similar type of benefit to the respondent/original writ-petitioner. However, learned Advocate General has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Basawaraj and Another** (supra) wherein the Hon'ble Supreme Court has observed in Paragraph 8 as under:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot



be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .)”

20. From the aforesaid observations made by the Hon’ble Supreme Court, it can be said that Article 14 of the Constitution of India is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other



cases.

21. In case of ***R. Muthukumar and Others*** (supra), the Hon'ble Supreme Court has observed in Paragraphs 28 and 29 as under:-

“28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj v. Special Land Acquisition Officer*[(2013) 14 SCC 81], this court ruled that:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be



perpetuated.”

29. Other decisions have enunciated or applied this principle (Ref : *Chandigarh Admn. v. Jagjit Singh*[(1995) 1 SCC 745], *Anand Buttons Ltd. v. State of Haryana*[(2005) 9 SCC 164], *K.K. Bhalla v. State of M.P.*[(2006) 3 SCC 581]; *Fuljit Kaur v. State of Punjab*[(2010) 11 SCC 455], and *Chaman Lal v. State of Punjab*[(2014) 15 SCC 715]). Recently, in *The State of Odisha v. Anup Kumar Senapati*[(2019) SCC OnLine SC 1207] this court observed as follows:

“If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.”

22. From the aforesaid observations made by the



Hon'ble Supreme Court, it can be said that if there has been a benefit or advantage conferred on one or a set of people without legal basis or decision, that benefit cannot multiply or be relied upon as a principle of parity or equality.

23. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the submission canvassed by learned counsel for the respondent/original writ-petitioner is examined, we are of the view that merely because the similar type of benefit has been given by the State in favour of similarly situated person, if the State has committed some error/illegality, the same cannot be perpetuated and this Court cannot direct the State Government to continue such illegality.

24. At this stage, we may recall that the Hon'ble Supreme Court in Paragraph 36 of the decision rendered in the case of **Devendra Sharma** (supra), where the respondent/original writ-petitioner was a party, specifically made the observation as discussed hereinabove. We are of the view that this Court cannot direct the State authority to grant the benefit of GPF and Group Insurance in favour of the respondent/original writ-petitioner.

25. In view of the aforesaid discussion, we are of the view that learned Single Judge has committed error while



passing the impugned order and, therefore, the impugned order is required to be set aside. Accordingly, the same is set aside.

26. The Letters Patent Appeal is, accordingly, allowed.

27. Interlocutory Application(s), if any, shall also stand disposed of.

(Vipul M. Pancholi, CJ)

(Partha Sarthy, J)

P.K.P./-

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CAV DATE	
Uploading Date	20.08.2025
Transmission Date	

