



**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.971 of 2025**  
**In**  
**Civil Writ Jurisdiction Case No.12607 of 2014**

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director in Chief, Health Services, Bihar, Patna.
4. The Director, Health Service, Bihar, Patna.
5. The Superintendent, Jawaharlal Nehru Medical College Hospital, Bhagalpur.
6. The District Magistrate, Bhagalpur-cum-Chairman District Compassionate Appointment Committee, Bhagalpur.

... .. Appellants

Versus

Ravi Shankar Kumar, Son of Late Vijay Thakur, resident of Village-Gowasha, Shikhpura, P.S. - Pandarak, District Patna.

... .. Respondent

**Appearance :**

For the Appellant/s	:	Mr. Kinkar Kumar, SC-9 Ms. Vagisha Pragya Vacaknavi, 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 HARISH KUMAR**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)**

**Date : 13-05-2026**

Heard Mr. Kinkar Kumar, learned Standing Counsel No.9 appearing on behalf of the appellants, and Mr. Shiv Kumar, learned counsel representing the writ petitioner-sole respondent herein.

2. The present intra-court appeal, preferred under Clause 10 of the Letters Patent, is directed against the order dated 28.02.2025 passed by the learned Single Judge of this





Court in C.W.J.C. No. 12607 of 2014. By the said order, the learned Single Judge has been pleased to allow the writ application by setting aside Letter No. 1533 dated 27.03.2014 as well as Letter No. 1323 dated 23.02.2023, whereby the claim of the writ petitioner for appointment on compassionate ground had been rejected. The authorities have further been directed to take a fresh decision, in accordance with law, with regard to the petitioner's claim for compassionate appointment, taking into consideration all relevant facts as noticed in the order, within the stipulated time frame.

3. Since the present case has a chequered history, it is necessary to briefly set out the relevant facts for proper adjudication of the issues involved, which are delineated hereinafter.

(i) The present case has its genesis in the appointment of the petitioner's father, who was initially engaged on daily wages in the year 1987 vide Memo No. 645 dated 28.03.1987, issued by the Superintendent, Medical College and Hospital, Bhagalpur. Subsequently, his services were regularized/absorbed to the post of *Darban* in the pay scale of Rs. 775–1025 vide Order No. 1161 dated 29.03.1990. However, upon detection of large-scale irregularities and illegalities in appointments made across various regional offices of the Health Department, the





authorities, vide Memo No. 928 dated 29.05.1991, directed that the salaries of such employees, including the petitioner's father, be withheld, and they were further restrained from discharging their duties.

(ii) Aggrieved by the aforesaid action, the petitioner's father preferred C.W.J.C. No. 6571 of 1999; in the meantime, however, his services came to be terminated. The said writ petition was disposed of vide order dated 26.02.2004, granting liberty to the petitioner's father to challenge the order of termination. Pursuant thereto, the petitioner's father filed C.W.J.C. No. 5114 of 2004 assailing his termination, which was heard analogously along with a batch of similar matters, the lead case being L.P.A. No. 946 of 2003 (The State of Bihar & Ors. vs. Purinder Solanki). The said L.P.A., along with other analogous matters, was disposed of vide order dated 26.06.2006, with a direction to the State authorities to reconsider the cases of all affected employees for regularization in terms of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka vs. Uma Devi (3), (2006) 4 SCC 1*.

(iii) In pursuance of the order dated 26.06.2006, a Five-Men Committee was constituted under the chairmanship of the Director-in-Chief, Health Services. Upon conducting an in-





depth inquiry, the Committee submitted its report in the year 2008, categorizing the concerned employees into three classes, viz. “irregular”, “illegal”, and “forged”. The High-Level State Committee found that the appointments of 91 employees were “irregular”, while the remaining employees were categorized as either “illegal” or “forged”. The petitioner’s father was placed in the category of “illegal” appointees. It is pertinent to note that only those 91 employees whose appointments were found to be “irregular” were absorbed by the Department as a one-time measure in terms of the mandate laid down in *Uma Devi (3)* (*supra*).

(iv) Aggrieved by the said inquiry report, several writ petitions came to be filed, including C.W.J.C. No. 8825 of 2009 filed by the petitioner’s father, which was heard along with C.W.J.C. No. 6575 of 2009. The Hon’ble Court, vide common order dated 06.10.2009, set aside the inquiry report dated 21.12.2008 submitted by the Five-Men Committee.

(v) Being aggrieved by the said order passed by the learned Single Judge, the State of Bihar preferred several Letters Patent Appeals. A separate L.P.A. was also filed against the order passed in the case of the petitioner’s father on 19.12.2011, which was subsequently numbered as L.P.A. No. 300 of 2015.

(vi) In the meantime, the challenge to the order passed





by the learned Single Judge remained unsuccessful before the Division Bench. However, the Letters Patent Appeal preferred in the case of the petitioner's father remained defective and, therefore, could not be heard along with the other connected L.P.As. In the interregnum, on account of a contempt application filed by the petitioner's father, being M.J.C. No. 1848 of 2010, he was reinstated in service, subject to the outcome of the L.P.A. filed in his case. During the pendency of the proceedings, the petitioner's father unfortunately died in harness on 15.04.2012. It is pertinent to note that all death-cum-retiral benefits were extended in his favour in compliance with the order passed in M.J.C. No. 3944 of 2013.

(vii) Meanwhile, the matters relating to other identically situated employees whose appointments had also been categorized as "illegal" and "forged", but whose termination orders were set aside by the learned Single Judge and affirmed by the Division Bench at the instance of the State of Bihar were carried to the Hon'ble Supreme Court in **Civil Appeal No. 8469 of 2018 and analogous cases (State of Bihar & Ors. v. Kirti Narayan Prasad) [(2019) 13 SCC 250]**. The Hon'ble Supreme Court, vide judgment dated 30.11.2018, accepted the findings of the Five-Men Committee and held that such appointments were *void ab initio* and not eligible for





regularization in terms of paragraph 53 of the judgment rendered in *Uma Devi (3) (supra)*.

(viii) Another batch of similar matters was further considered by the Hon'ble Supreme Court in *State of Bihar & Ors. v. Devendra Sharma [(2020) 15 SCC 466]*, which came to be decided vide order dated 17.10.2019. The Hon'ble Court held that such appointments were made without any sanctioned posts and without following the due recruitment process, and were in the nature of back-door entries, reflective of nepotism and favouritism. It was further held that such appointments could not, by any judicial standard, be termed "irregular", but were clearly "illegal", having been made through a wholly arbitrary process.

(ix) In the meanwhile, when L.P.A. No. 300 of 2015 was taken up on 18.12.2018, it was submitted on behalf of the respondent (writ petitioner) that an identical issue was pending consideration before the Hon'ble Supreme Court in S.L.P. (C) No. 2806 of 2014, and accordingly, the matter was directed to be listed after disposal of the said S.L.P. It is relevant to note that, upon being informed that the original writ petitioner in C.W.J.C. No. 8825 of 2009 had expired, the State filed I.A. No. 5590 of 2016 for substitution of his legal heirs, which was allowed, and his son, Ravi Shankar Kumar, was substituted as





the writ petitioner.

(x) Subsequently, S.L.P. (C) No. 28306 of 2014 was heard analogously with Civil Appeal No. 7879 of 2019 (*State of Bihar & Ors. v. Devendra Sharma*), and disposed off accordingly, as noted hereinabove. However, when L.P.A. No. 300 of 2015, arising out of the common order dated 06.10.2009 in the case of the petitioner's father, was taken up on 14.12.2020, it was submitted on behalf of the present writ petitioner that his father (original petitioner) had expired and his legal heirs had not been substituted. In view thereof, the Court disposed of the L.P.A. as having abated.

(xi) Thereafter, the State filed a modification application being M.J.C. No. 2605 of 2022 seeking modification of the order dated 14.12.2020. The said application was disposed of with liberty to file a review petition. Pursuant to the liberty so granted, the State has preferred Civil Review No. 176 of 2024, which is presently pending consideration.

4. In the aforesaid factual background, now we take up the facts of C.W.J.C. No. 12607 of 2014, filed by the present writ petitioner for consideration.

(i) The writ petition was instituted seeking quashing of Memo No. 1533 dated 27.03.2014, issued under the signature of the Superintendent, Jawahar Lal Nehru Medical College &





Hospital, Bhagalpur, whereby the petitioner was informed that his claim for appointment on compassionate grounds would be considered only after disposal of the L.P.A. arising out of the case of his father.

(ii) During the pendency of the writ petition, the State respondents issued Memo No.1323 dated 23.02.2023, rejecting the petitioner's claim for compassionate appointment. The said subsequent development and the order were also brought on record and challenged by the petitioner through I.A. No. 2 of 2023.

(iii) The State and the concerned respondents filed their counter affidavit(s) as well as supplementary counter affidavit(s) opposing the reliefs sought in the writ petition and the interlocutory application, placing the relevant facts on record.

(iv) Upon completion of pleadings, the writ petition was finally heard on 28.02.2025. By the judgment/order passed therein, the impugned Memo dated 27.03.2014 as well as Memo dated 23.02.2023 were set aside, and the writ petition was allowed. The respondent authorities were consequently directed to take a fresh decision, in accordance with law, with respect to the petitioner's claim for appointment on compassionate grounds within a stipulated period.





5. Mr. Kinkar Kumar, learned Counsel for the appellants, while taking this Court through the impugned judgment/order passed by the learned Single Judge, submitted that once the very appointment of the petitioner's father had been found to be "illegal" by the High-Level State Committee constituted pursuant to the directions of the learned Division Bench in L.P.A. No. 946 of 2003, and such findings have also received affirmation from the Hon'ble Apex Court, the benefit of compassionate appointment cannot be extended to the present writ petitioner, who is the son of a deceased employee whose appointment stood declared illegal and non est in the eyes of law. It is further contended that the learned Single Judge failed to appreciate that, in view of the law laid down in *Kirti Narayan Prasad (supra)* and *Devendra Sharma (supra)*, wherein appointments of similarly situated persons have been held to be "illegal" and "forged", no subsequent event can validate such appointments, nor can any service benefits flow therefrom particularly when the writ petitioner has failed to establish that his father's appointment was regular and in accordance with law.

6. Mr. Kinkar, further submitted that the learned Single Judge has misinterpreted the order passed in M.J.C. No. 4797 of 2018 by holding that the judgments of the Hon'ble





Apex Court operate *in personam* and not *in rem*, and thereby erroneously concluded that the respondents were not justified in rejecting the petitioner's claim for compassionate appointment by relying upon judgments of the Hon'ble Supreme Court in cases to which neither the petitioner nor his father was a party. It is lastly contended that the grant of certain service benefits pursuant to orders passed in contempt proceedings does not have the effect of curing an otherwise illegal appointment or converting it into a valid one, particularly when such benefits were extended subject to the outcome of the pending L.P.A. preferred by the State. Moreover, he submitted that if any benefit has been erroneously conferred upon a person or a class of persons without any legal basis, the same cannot be claimed as a matter of right by others on the ground of parity or equality, as the principle of equality cannot be invoked to perpetuate an illegality. In support of the aforesaid submissions, reliance has been placed on the judgment rendered in **L.P.A. No. 1138 of 2024 (State of Bihar & Ors. vs. Upendra Sharma)**.

7. *Per contra*, Mr. Shiv Kumar, learned Counsel appearing for the respondent-writ petitioner, refuting the aforesaid submissions, submitted that once the order of termination of the petitioner's father stood quashed by this Court vide order dated 06.10.2009 passed in C.W.J.C. No. 6575





of 2009, and the said order has attained finality, the concerned authorities are duty-bound to consider the claim of the dependent of the deceased employee for appointment on compassionate grounds in accordance with law. It is further contended that an identically situated person, namely Munna Kumar, had approached this Court in C.W.J.C. No. 1322 of 2018, wherein direction was issued to consider his case for compassionate appointment, and pursuant thereto, he has been duly appointed. It is submitted that denial of similar consideration to the present petitioner would be arbitrary and discriminatory.

8. Mr. Shiv Kumar, learned Counsel appearing for the respondent/writ petitioner, further contended that it is an admitted position that the petitioner's father was reinstated in service after his termination order was set aside, and he was extended all consequential benefits, including salary for the period he had worked or remained out of service, as well as death-cum-retiral benefits.

9. In such circumstances, it is urged that since the petitioner's father died in harness and the order passed by the learned Single Judge to the extent it relates to the petitioner's father has not been set aside till date, the writ petitioner is entitled, at the very least, to consideration of his claim for





appointment on compassionate grounds in accordance with law.

10. Having heard the learned counsel for the respective parties at length, and upon perusal of the materials available on record as well as the impugned judgment/order passed by the learned Single Judge, the questions that arise for consideration before this Court lie within a narrow compass, and are formulated as follows:

### **ISSUES**

(i) As to whether the law laid down by the Hon'ble Supreme Court in *Kirti Narayan Prasad (supra)* and *Devendra Sharma (supra)* would be applicable to the case of the present writ petitioner, particularly when neither the petitioner nor his father was a party to the said proceedings?

(ii) Whether the services of the petitioner's father, who died in harness on 15.04.2012, can be declared "illegal" posthumously, without affording him an opportunity to contest such findings?

(iii) Whether, the State and its authorities having extended all consequential service benefits, including salary and death-cum-retiral dues to the petitioner's father, it is open to them at this stage to treat his appointment as illegal?

(iv) Whether, in the facts and circumstances of this case, the State is legally





justified in declining to consider the claim of the writ petitioner for appointment on compassionate grounds; and

(v) Whether the petitioner's claim of parity with similarly situated persons, such as Munna Kumar, can be denied without any justifiable basis?

11. Having formulated the aforesaid issues; for its consideration, this Court now proceeds to examine the same in the light of the pleadings on record, the submissions advanced by the learned counsel for the parties, and the settled principles of law.

12. ***Issue No. I: As to whether the law laid down by the Hon'ble Supreme Court in Kirti Narayan Prasad (supra) and Devendra Sharma (supra) would be applicable to the case of the present writ petitioner, particularly when neither the petitioner nor his father was a party to the said proceedings?***

12.1 It is not in dispute that the petitioner's father, along with several others engaged on daily wage basis in different regional offices of the Health Department, was initially restrained from discharging his duties and was subsequently terminated, leading to multiple rounds of litigation. In order to resolve the controversy, a Five-Men Committee was constituted pursuant to the order dated 26.06.2006 passed in L.P.A. No. 946





of 2003, to examine the legality of such appointments.

12.2 The Five-Men Committee, upon a thorough examination of the records and after conducting an extensive inquiry, submitted its report categorizing the concerned employees into three classes viz., “irregular”, “illegal”, and “forged”. The report identified 91 employees whose appointments were found to be “irregular” and whose services were consequently directed to be regularized as a one-time measure, in view of the directions contained in *Uma Devi (3) (supra)*. The remaining 228 persons were found to be illegally appointed and 358 persons as forged, whose services were terminated, consequently. Aggrieved thereby, the affected employees challenged the said report and the consequential orders of termination before this Court, and the writ petitions were allowed.

12.3 The matters ultimately reached the Hon’ble Supreme Court in *Kirti Narayan Prasad (supra)* and *Devendra Sharma & Ors. (supra)*. A three-Judge Bench of the Hon’ble Supreme Court, in *Kirti Narayan Prasad (supra)*, while reiterating the mandate of the Constitution Bench judgment in *Uma Devi (3) (supra)*, held as follows:

“16. In the instant cases, the writ petitioners have filed the petitions before the





*High Court with a specific prayer to regularise their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in government service surreptitiously by the Civil Surgeon-cum-Chief Medical Officer concerned by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show-cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (3) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by*





Article 311 of the Constitution or under any other disciplinary rules shall not arise.

*(Emphasis Supplied)*

17. Therefore, the civil appeals filed by the writ petitioners in the aforesaid batch of appeals are hereby dismissed. The civil appeals filed by the State of Bihar are allowed and the writ petitions filed before the High Court of Patna in the said cases are hereby dismissed. There shall be no order as to costs.”

12.4 Similarly, in **Devendra Sharma** (*supra*), a two-Judge Bench of the Hon’ble Supreme Court, following the dictum laid down in **Kirti Narayan Prasad** (*supra*), held that *the appointments in question could not be treated as “irregular”, but were clearly “illegal” in terms of the law laid down in Uma Devi (3)*. The Court observed that *such appointments were made without any sanctioned posts, without any advertisement inviting applications from eligible candidates, and without following any recognized recruitment procedure*. It was further held that *such appointments were nothing but back-door entries, reflecting nepotism and favouritism, and therefore, by no judicial standard could they be termed “irregular”;* rather, they were illegal, having been made through a wholly arbitrary process.

12.5 Upon a conjoint reading of the aforesaid





decisions, it emerges that the Hon'ble Supreme Court approved the course adopted by the State and the report submitted by the Committee issued in compliance with the decision of the learned Division Bench in *Purinder Solanki (supra)*. The Committee had duly considered the materials furnished by the concerned employees and arrived at a categorical finding that the appointments made were vitiated from very inception and were liable to be set aside, leading to the issuance of the impugned termination orders. The father of the petitioner was also subjected to enquiry conducted by the duly constituted Committee and his appointment was found to be illegal like many other persons and finally the findings of the Committee's report was duly accepted by the Hon'ble Supreme Court.

12.6 It would also be worth noting that the Hon'ble Supreme Court further observed that, in the peculiar facts and circumstances of the case, the principles of natural justice were not violated merely because no individual opportunity of hearing was afforded to the employees prior to termination, particularly in view of the foundational illegality attached to their appointments. Besides the fact, such Committee had issued public notices and 987 candidates appeared before the Committee, which had considered the materials supplied by the employees and then came to a firm decision to the effect that all





these appointments made by Dr. Mallik were vitiated since the inception.

12.7 Having discussed the aforesaid aspects, it stands crystallized that the very legality of the appointment of the petitioner's father, along with thousands of other similarly situated employees, was subjected to a detailed inquiry conducted by a High-Level Committee constituted pursuant to the judgment of the Division Bench of this Court. The report of the Committee, in unequivocal terms, classified such appointments under the categories of "irregular", "illegal", and "fraudulent".

12.8 It is not in dispute that the petitioner's father fell within the category of illegal appointees. Nevertheless, upon challenge being made, the order of termination was set aside and the petitioner's father came to be reinstated. However, the State preferred a Letters Patent Appeal, which was registered as L.P.A. No. 300 of 2015. In the meantime, the petitioner's father expired, though his reinstatement remained subject to the outcome of the said L.P.A.

12.9 The report of the Committee was ultimately subjected to scrutiny before the Hon'ble Supreme Court, and the Hon'ble Supreme Court did not find any reason to differ from the findings recorded therein. Consequently, this Court finds no





difficulty in accepting the veracity and correctness of the said report.

12.10 Thus, in the considered opinion of this Court, the law laid down by the Hon'ble Supreme Court in *Kirti Narayan Prasad* and *Devendra Sharma (supra)* shall squarely apply to the case of the present writ petitioner, notwithstanding the fact that neither the writ petitioner nor his deceased father was a party to the aforesaid cases.

13. **Issue No. II:** *Whether the services of the petitioner's father, who died in harness on 15.04.2012, can be declared "illegal" posthumously, without affording him an opportunity to contest such findings?*

13.1 Before answering the issue, as culled out hereinabove, it would be pertinent to observe that, undisputedly, the death of a delinquent during the pendency of disciplinary proceedings would ordinarily result in abatement of such proceedings. However, it is equally well settled that where the death occurs after conclusion of the inquiry and when the matter is pending either for final orders or at the appellate stage, the situation stands on a different footing, and there can be no abatement of disciplinary proceedings which have already attained finality.

13.2 In such circumstances, the right to sue survives,





and the legal heirs, if desirous of contesting the findings of guilt or the order of punishment passed by the disciplinary authority, may pursue the appeal already preferred by the deceased delinquent or may themselves prefer an appeal where the delinquent has expired after passing of the order of penalty. If, while pursuing such appellate remedy, the legal heirs are able to demonstrate that the matter requires reconsideration at the stage of the disciplinary authority by way of remand, the proceedings may then be held to have abated; otherwise, not.

13.3 A learned Division Bench of this Court, in *The State of Bihar & Ors. v. Shanti Kumari & Ors. [L.P.A. No.247 of 2015]*, while emphasizing the aforesaid legal position, categorically observed as follows:

*“A death of the delinquent at the stage of disciplinary proceeding and at the stage of appellate proceeding is vastly different. In fact if the death of a delinquent occurs in the midst of the disciplinary proceeding there can be no confusion that the proceeding would abate instantly. But the situation would be vastly different if the death takes place after the proceeding has concluded and the matter is resting with the Disciplinary Authority for final orders or after orders are passed or where the death takes place at the appellate stage.”*

The learned Division Bench, in the afore-noted case,





while considering the challenge to the order passed by the learned Single Judge whereby the writ petition was allowed and the disciplinary proceeding was held to have abated and the State Government was directed to extend consequential benefits to the substituted legal heirs of the deceased Government servant, disagreed with the findings recorded by the learned Single Judge on the issue of abatement of disciplinary proceedings as well as the direction for remand to the appellate authority.

13.4 The learned Division Bench held that the view taken by the learned Single Judge was contrary to the settled legal position discussed hereinabove. While emphasizing the provisions contained in Order XXII Rule 1 read with Rule 11 of the Code of Civil Procedure, as also Section 394 of the Code of Criminal Procedure, the Division Bench observed that the right to sue survives in favour of the legal heirs, who are fully entitled to pursue the matter at the appellate stage for examining the legality and validity of the order passed by the original authority.

13.5 Now again coming to the facts of the present case, it would appear that during the lifetime of the petitioner's father, he was restrained to discharge duty and later on terminated from service, whereafter he challenged the said





action by filing C.W.J.C. No. 5114 of 2004. Subsequently, in order to resolve the controversy regarding the legality of such appointments, a batch of writ petitions and Letters Patent Appeals came to be disposed of analogously in ***Purinder Solanki (supra)*** with a direction for constitution of a Committee. The petitioner's father was also subjected to inquiry by the said Committee, which categorically recorded a finding that his appointment fell within the category of "illegal appointees".

13.6 Upon challenge to the inquiry report, the learned Single Judge, in C.W.J.C. No. 6575 of 2009 and analogous cases, held that *the impugned inquiry report had been prepared in complete violation of the principles of natural justice and the Committee had ignored relevant Government circulars while categorizing the petitioners as illegal and forged appointees; and had merely relied upon the dispatch register without examining the signatures under which the appointment letters had allegedly been issued.*

13.7 However, the aforesaid order was challenged during the lifetime of the petitioner's father, by preferring a Letters Patent Appeal on 19.12.2011, which was subsequently registered as L.P.A. No. 300 of 2015. When the said L.P.A. was taken up on 18.12.2018, it was submitted on behalf of the writ





petitioner that an identical issue was pending consideration before the Hon'ble Supreme Court in S.L.P.(C) No. 2806 of 2014, and accordingly the matter was directed to be listed after disposal of the said Special Leave Petition.

13.8 In the meanwhile, upon information being furnished regarding the death of the original writ petitioner, the State filed an application for substitution of his legal heirs, whereafter his son, Ravi Shankar Kumar, was substituted as the writ petitioner in place of the deceased original petitioner. However, vide order dated 14.12.2020, L.P.A. No. 300 of 2015, arising out of the common order dated 06.10.2009 passed by the learned Single Judge, came to be disposed of as abated upon submission made on behalf of the writ petitioner that his father had already expired and the legal heirs had not been substituted within time.

13.9 Notwithstanding the aforesaid facts, once this Court finds that the decisions rendered by the Hon'ble Supreme Court in *Kirti Narayan Prasad* and *Devendra Sharma (supra)* are fully applicable to the facts of the present case, and further that the services of the petitioner's father had already been categorized as "illegal" during his lifetime, based upon the report of the Committee, the finding of which was duly accepted in the above noted cases, this Court finds no difficulty in





reaffirming and accepting such finding of illegal appointment in light of the authoritative pronouncement of the Hon'ble Supreme Court. Even, if it is after the death of the petitioner's father, in view of the settled position of law that when death occurs after conclusion of inquiry or the matter is pending, either for final order or appellate stage, there can be no abatement of proceeding. Accordingly, **Issue No.II** stands answered.

14. **Issue No. III:** *Whether, the State and its authorities having extended all consequential service benefits, including salary and death-cum-retiral dues to the petitioner's father, it is open to them at this stage to treat his appointment as illegal?*

14.1 To answer the aforesaid issue, this Court again finds it necessary to recapitulate the relevant facts. Undoubtedly, the order of termination passed against the petitioner's father had been set aside by the learned Single Judge; however, the same was challenged by the State by filing a Letters Patent Appeal. In the interregnum, on account of initiation of contempt proceedings being M.J.C. No. 1848 of 2010 by the petitioner's father, he was reinstated in service, though such reinstatement was expressly made subject to the final outcome of the L.P.A. preferred by the State.





14.2 It is well settled that where reinstatement, consequential salary, or death-cum-retiral benefits are extended to an employee during the pendency of litigation and are expressly made subject to the result of an appeal or other judicial proceedings, any action taken during such interregnum period must necessarily abide by the final verdict rendered in the *lis*. There may be several reasons, as evident in the present case, which resulted in payment of salary and release of death-cum-retiral dues to the petitioner's father. Nevertheless, the order of the learned Single Judge, pursuant to which reinstatement and consequential benefits were granted, ultimately came up for consideration before the highest Court of the land.

14.3 Once the matter was examined by the Hon'ble Supreme Court, any findings recorded by the learned Single Judge, or even affirmed by the learned Division Bench, necessarily became subject to and governed by the authoritative pronouncement of the Hon'ble Supreme Court. In the present case, the Hon'ble Supreme Court has categorically upheld the findings of the State Committee that the appointments in question were illegal and *void ab initio*.

14.4 Therefore, irrespective of the fact that the petitioner's father had been granted consequential service





benefits, including salary and death-cum-retiral dues during the pendency of the proceedings, there exists no legal impediment even at this stage in treating the very appointment as illegal in terms of the law laid down in *Kirti Narayan Prasad* and *Devendra Sharma (supra)*. Accordingly, **Issue No. III** is answered.

**15. Issue No. IV: *Whether, in the facts and circumstances of this case, the State is legally justified in declining to consider the claim of the writ petitioner for appointment on compassionate grounds?***

15.1 Before proceeding to consider the aforesaid issue, it would be apposite to observe that appointment on compassionate grounds is an exception to the mandate of Article 14 of the Constitution of India. The right to seek such appointment is not an inherent right, but is entirely dependent upon the prevailing scheme or the statutory rules, if any, governing the field. It is also pertinent to note that service benefits are purely statutory in nature and springs from the legal right of an employee to validly hold the post. It is only by virtue of such lawful entitlement to the post that a person becomes entitled to receive the consequential service benefits attached thereto.

15.2 It would be prudent to refer to the Full Bench





decision of this Court in *Rita Mishra v. Director Primary Education [1987 SCC OnLine PAT 159]*, wherein the Court, while dealing with appointments in the Education Department and claims for salary despite the appointments being forged, fraudulent, or illegal, declined such claims and observed as follows:

*“36. 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.”*

15.3 Since this Court has already concluded in the foregoing paragraphs that the appointment of the petitioner's father had been declared “illegal” by the Committee, the findings whereof have subsequently been accepted by the Hon'ble Supreme Court, it necessarily follows that no employee





can claim entitlement to consequential service benefits unless his appointment and continuance in service are held to be legal and valid.

In the facts and circumstances of the present case, therefore, the State is legally justified in declining to consider the claim of the writ petitioner for appointment on compassionate ground. **Issue No. IV** is answered accordingly.

16. **Issue No. V:** *Whether the petitioner's claim of parity with similarly situated persons, such as Munna Kumar, can be denied without any justifiable basis?*

16.1 To answer the aforesaid issue, this Court deems it appropriate to refer to the settled proposition of law that Article 14 of the Constitution of India is not meant to perpetuate illegality or fraud by extending the benefit of an erroneous decision rendered in some other case. The Hon'ble Supreme Court, in *Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81]*, has underscored that even if some similarly situated persons have inadvertently or mistakenly been granted a particular relief or benefit, such an order does not confer any legal right upon others to claim identical relief.

16.2 The Hon'ble Supreme Court has consistently held that if a wrong has been committed, the same cannot be perpetuated. Equality is a positive concept and cannot be





claimed in illegality. Therefore, Article 14 cannot be invoked either by a citizen or enforced by a Court in a negative manner. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, or if an erroneous order has been passed by a judicial forum, others cannot invoke the jurisdiction of a superior Court for repeating or multiplying the same illegality or irregularity, nor can they seek parity on the basis of such wrong decision. A wrong order or erroneous decision in favour of one party does not create any enforceable right in favour of another person to claim similar benefits.

The Hon'ble Supreme Court has further cautioned that Article 14 cannot be stretched to such an extent so as to make the functioning of the administration impossible.

16.3 This Court is also persuaded to recapitulate the observations made by the Hon'ble Supreme Court in ***R. Muthukumar & Ors. v. Chairman and Managing Director, TANGEDCO & Ors.*** [2022 SCC OnLine SC 151], wherein, in paragraph 28, it was observed as follows:

*“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.”*

16.4 It is now well settled that the guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. Wrong decision by the Government does not confer any right upon another person to enforce such wrong order and claim parity or equality.

16.5 Once this Court has already concluded and held that the appointment of the petitioner’s father was illegal in terms of the law declared by the Hon’ble Supreme Court, as noticed hereinabove, the petitioner’s claim of parity with Munna Kumar and others, who are stated to have been granted compassionate appointment, is wholly untenable both in law





and on facts. **Issue No. V** is answered accordingly.

17. Upon consideration of the issues framed hereinabove, this Court arrives at the following conclusions:

(i) The law laid down by the Hon'ble Supreme Court in *Kirti Narayan Prasad* and *Devendra Sharma (supra)* squarely applies to the case of the present writ petitioner, notwithstanding the fact that the petitioner and/or his father was not a party to the said proceedings, inasmuch as the appointment of the petitioner's father was also examined by the duly constituted Committee and found to be "illegal".

(ii) The services of the petitioner's father can validly be treated as "illegal" even after his death, since the inquiry regarding the legality of his appointment had already attained finality during his lifetime and the right to pursue the matter survived at the appellate stage. Besides the fact that Committee's report, which crystallized the appointment of the petitioner's father as "illegal" stood affirmed by the Hon'ble Supreme Court in *Kirti Narayan Prasad* and *Devendra Shrama (supra)*.

(iii) Mere grant of consequential service benefits, including salary and death-cum-retiral dues during the pendency of litigation, does not create any estoppel against the State, particularly when such benefits were extended subject to the





final outcome of the proceedings and the Hon'ble Supreme Court has ultimately held the appointments to be illegal and *void ab initio*.

(iv) Since compassionate appointment is not a vested right and can arise only from a lawful and valid appointment, the State was fully justified in declining the claim of the petitioner for appointment on compassionate grounds after the appointment of his father stood declared illegal.

(v) The petitioner cannot claim parity with other persons who may have been granted similar benefits, as Article 14 of the Constitution does not envisage negative equality, nor can illegality or an erroneous benefit extended in another case be relied upon to claim similar relief.

18. Having answered all the issues and arrived at the conclusions noted hereinabove, this Court, with utmost respect to the learned Single Judge, is of the considered opinion that the impugned judgment/order suffers from patent illegality and is contrary to the law laid down by the Hon'ble Supreme Court in *Kirti Narayan Prasad* and *Devendra Sharma (supra)*. Accordingly, the judgment/order dated 28.02.2025 passed in C.W.J.C. No. 12607 of 2014 is hereby set aside. Consequently, the writ petition stands dismissed.





19. The present Letters Patent Appeal stands allowed.

20. There shall, however, be no order as to cost(s).

**(Harish Kumar, J)**

**(Sangam Kumar Sahoo, CJ):**

**(Sangam Kumar Sahoo, CJ)**

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