

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1150 of 2013**

**IN**

**Civil Writ Jurisdiction Case No. 3919 of 2013**

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1. The State of Bihar through The Principal Secretary, Health Department, Govt. of Bihar
  2. The Project Director, Bihar AIDS Control Society (Health Department, Govt. of Bihar), Sheikhpura, Patna
  3. The Dy. Director (VCTC), Bihar State AIDS Control Society, Health Department, Govt. Of Bihar, Sheikhpura, Patna

.... .... Respondents/Appellants

Versus

1. Vimal Prakash, S/o Late Umesh Narayan Verma, R/o Mohalla- Mitra Mandal Colony, B/24, P.S.- Anisabad, Dist- Patna
2. Ram Kumar Gupta, S/o Jagnarayan Gupta, R/o Village- Jith Kahiya, Mai Sthan, M.I.T., P.S.- Brahampura, Dist- Muzaffarpur
3. Sadhna Singh, W/o Ravi Shankar Prasad Singh, H/No.A/13, Behind Patliputra School, Beur, Jail Road, Anisabad, Patna
4. Ashish Ranjan Akhilesh, S/o Late Jitendra Kumar Verma, Village+Post-Tiwari Tola, Shanti Nagar, Ward No. 32, Dist- Saharsa
5. Vijay Kumar S/O Shri Durga Sah, Gram+Post- Bhatauni, Via Simti Bakhtiyarpur, Dist- Saharsa
6. Krishna Kumar, S/o Shri Kapil Deo Sharma, Gram+Post- Badhauna, Via Kharagpur, Dist- Munger
7. Shamim Akhtar, S/o Iliyas Ansari, Village+Post- Sarta, P.S.- Rahika, Dist- Madhubani
8. Atul Ranjan, S/o Shri Umesh Goit, R/o Village- Parsahi Laukta, P.S.- Khutauta, Dist- Madhubani
9. Ajay Kumar, S/o Shri Umesh Goit, R/o Village- Parsahi Laukta, P.S.- Khutauta, Dist- Madhubani
10. Savita Kumari, D/o Ramdeo Das, R/o Mohalla- Bhasani Tola, P.S. Mal Salami, Dist- Patna
11. Meena Kumari, C/o Professor Bikram Narayan Singh, R/o Mohalla Krishna Puri, P.S. Sheikhpura, New Zeromile, Dist- Muzaffarpur
12. Md. Anwar, S/o Md. Id Ansari, R/o Rahat Cottage House No. 103, Asif Colons Opposite Sabita Apartment, P.O.- Ashya Nagar, Dist- Patna
13. Kiran, D/o Shri Nand Bihari Singh, W/o Shri Mahendra Kumar Sinha, Village- Pachetan, P.O.+P.S.- Asthawan, Dist- Nalanda (Bihar)
14. Anil Kumar, S/o Baidhnath Singh, R/o Mohalla- Sultanpur, Koiri Tola, House No. 327, Ward No. 17, Danapur
15. Amrendra Kumar, S/o Bindeshwari Sah, P.O. Panchvir Market, Dist- Begusarai
16. Kamakhya Narayan Shukla, S/o Shri Rajendra Prasad Shukla, Village- Baksara, P.S. Katmahar, Dist- Rohtas
17. Archana Prabhakar, W/o Rudra Murti, R/o Vijay Nagar, Road No. 07, Rukunpura, Patna
18. Rita Kumari, W/o Saroj Kumar, Village+Post- Bhaudiha, P.S.- Nokha, Dist- Rohtas, At Present Address C/o Sanchita Nand Prasad, CID Inspector, Lalgi Tola, Patna-1
19. Dilip Kumar, S/o Ram Narayan Das, Village- Pakki Sarai, P.O.+ P.S.- Ghogha,

Dist- Bhagalpur

20. Braj Mohan, S/o Shri Bhugeshwar Jha, Village+Post- Liladh, Bhaya Ghoghadiha, Dist- Madhubani

21. Arpana, W/o Dr. Aditya Ranjan, R/o Mohalla- Bajar Samiti (Rampur) Patna, D/O Late Shri Krishna Sharma, Motihari, Station Road Motihari (East Champaran)

.... .... Petitioners/Respondents

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**Appearance :**

For the Appellants : Shri Ashok Kumar Dubey, Adv.  
Shri Upendra Kumar Singh, Adv.  
For the Respondents : Shri M.K. Mishra, Sr. Adv.  
Shri Prabhakar Dwivedi, Adv.  
Shri Radha Mohan Pathak, Adv.  
Shri S. Ajeem, Adv.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE GOPAL PRASAD**

ORAL JUDGMENT

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 12-01-2015**

The respondents in C.W.J.C. No.3919/13 filed this Appeal under Clause-X of the Letters Patent, assailing the order dated 15.7.2013, passed by the learned single Judge. The writ petition was filed by the respondents herein.

Briefly stated, the facts are that the respondents were appointed on contract basis as Counselors-cum-Lab Technicians; in the Voluntary Counseling and Testing Centres established by the Bihar State AIDS Control Board, the 2<sup>nd</sup> appellant, between the years 2003 and 2007; at various places in the State. Their contracts were continued or reviewed, from time to time and the last of such renewals



was granted on 22.7.2011 up to 31.3.2012. Though the respondents were appointed at particular places, they have been transferred to different places through the orders of the competent authority. In the proceedings dated 22.7.2011, through which the contract was extended, it was mentioned that the respondents shall execute certain agreements, at the place of their initial appointment.

The grievance of the respondents was that the appellants; and in particular appellants 2 and 3 were insisting that they must work at the place of their initial appointment, and not the places to which they were transferred, and that the remuneration was not being paid. Another grievance of the respondents was that steps were being taken to appoint fresh candidates; against the posts that were already occupied by them. With these complaints, they filed the writ petition.

The appellants opposed the writ petition by filing counter affidavit, stating inter alia, that the expression “candidates were required to sign the renewal agreement at the place of initial posting” occurring in the order of removal would connote that they had to work at those places, from the date of that renewal. It was also pleaded that since the respondents did not work at the places of the initial

appointment they are not entitled for remuneration. Another plea was that it is open to the appellants to make appointments as and when necessity arises.

Learned single Judge allowed the writ petition through order dated 15.7.2013 with certain directions. Hence, this Appeal.

Heard Shri Upendra Kumar Singh, learned counsel for the appellants, and Shri Radha Mohan Pathak and Shri Prabhakar Dwivedi, learned counsel for the respondents.

The distorted interpretation given by the appellants 2 and 3, to the order dated 22.7.2011, which is otherwise clear and unambiguous, has given rise to this unwanted and avoidable litigation. It is a matter of record that the respondents were appointed as Counselors-cum-Lab Technicians between the years 2003 and 2007. Though their initial appointment was at a particular centre, they have been transferred to various places. The same is evident from the order dated 19.3.2008 which discloses that the technicians were transferred not only within the district but even outside the district.

The renewal of the contract was done on 23.7.2011; up to 3.3.2012. Obviously, because the original

contract was executed at the place of initial appointment, it was directed that the renewal agreement shall also be executed at the same place, i.e. the place of initial appointment.

In the proceedings dated 27.3.2011 it was not mentioned that the respondents shall work at the place of their initial appointment; and not at the place to which they have been transferred. It is also essential to note that the transfer orders were issued by different authorities. In some cases, they were made from one district to another. At any rate, if it were to be the intention of appellants 2 and 3 that the respondents must work at the place of initial appointment, with effect from the date of signing of the contract of renewal, a clear clause to that effect ought to have been incorporated. Not a word is said about the place of working in the order dated 27.3.2011.

In case appellants 2 and 3 wanted any change as to the place of working of the respondents, they could have certainly passed orders in this behalf. It appears that whole exercise was sought to be undertaken through oral directions.

The second aspect is about non-payment of remuneration. As long as the respondents reported at the

place of their duty, the appellants are under the obligation to pay the remuneration. There was absolutely no justification for denying payment of remuneration to such of the respondents who are stated to have reported for their duty.

So far as the grievance of the respondents that the steps are being taken by the appellants for filling up the posts by fresh candidates, the learned single Judge took note of certain developments.

If the appellants intend to appoint the technicians in the same vacancies, against which, the respondents were appointed, it is totally impermissible for them. Once the appellants have been appointed and they were imparted training, they cannot be displaced by similar set of contractual appointees. It is a different matter that if the appellants want to make permanent appointment against the posts, they shall have to issue notification in that behalf and the respondents shall also be entitled to apply for them.

Therefore, the Letters Patent Appeal is dismissed, with the above clarification.

Since the order of the learned single Judge passed in the writ petition merges into this proceeding, we grant three week time to the appellants to comply with the

directions issued therein, as regards payment of salary and other aspects.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

**(L. Narasimha Reddy,CJ)**

**(Gopal Prasad, J)**

K.C.jha/-  
A.F.R.

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