

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2247 of 2015

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1. Anand Mohan S/O Guljar Prasad Resident Of Village + Post - Ranipur, P.S. - Islampur, District - Nalanda (Bihar).
 2. Prasant Swarup Chandra S/O Late Chaturbhuj Pandit Village - Pokharia, Post + District - Begusarai (Bihar).
 3. Md. Sarfaraz Ahmed S/O Md. Gulam Nabi Village + Post - Simla, P.S. Kasma, District - Aurangabad (Bihar).
 4. Md. Amiruddin Ansari S/O Md. Muslim Ansari Village - Jamaila Bazar Post - Madna, P.S. - Andhra Thari District - Madhubani (Bihar).
 5. Mukesh Paswan S/O - Musafir Paswan Village - Mankar, Post - Siur, P.S. - Roh, District - Nawada (Bihar).

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Health, Government Of Bihar, Patna.
2. The Secretary, State Health Society, Bihar.
3. The Executive Director, State Health Society, Bihar, Patna.
4. The Addl. Executive Director, State Health Society, Bihar.
5. The District Magistrate, Vaishali At Hajipur, Bihar.
6. The District Health Society, Vaishali Through Its Civil Surgeon Cum Member Secretary, District Health Society, Vaishali.
7. The District Magistrate, West Champaran At Bettiah.
8. The District Health Society West Champaran Through Its Civil Surgeon Cum Member Secretary, Distt. Health Society.
9. The District Magistrate, Kaimur (Bhabhua).
10. The District Health Society Through Its Civil Surgeon Cum Member Secretary, District Health Society Kaimur (Bhabhua).
11. The District Magistrate Muzaffarpur.
12. The District Health Society Through Its Civil Surgeon Cum Member Secretary District Health Society, Muzaffarpur.
13. The District Magistrate East Champaran At Motihari.
14. The District Health Society, Through Its Civil Surgeon Cum Member Secretary, District Health Society East Champaran At Bettiah.
15. The Union Of India Through The Director General Of Health Services Ministry Of Health And Family Welfare, Government Of India, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Advocate
For the Respondent No. 5 : Ms. Kanak Verma, Advocate
For the Respondent No. 3 and 4: Mr. K. K. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Heard learned counsel for the parties.

There are five petitioners. All of them have been appointed on contract basis with clear stipulation in their letters of appointment that such appointment does not create any right in their favour or any claim for their continuance or regularization. They even had to execute a bond in this regard, as would be evident from reading of Annexure-3, dated 07.09.2012. Along with the appointment letter, contained in Annexure-3, the details of the terms and conditions of the agreement for such engagement has been quite extensively incorporated and included. Same and similar kind of agreement has been entered into by other petitioners as well on the post on which they were engaged in a temporary capacity.

When the respondent-State authorities decided to do away with their engagement for the reasons indicated in Annexure-9, the writ application has been filed, seeking quashing of Annexure-9, dated 10.12.2014.

Many a things have been said that one contractual engagement cannot be substituted by another contractual engagement. New advertisement, which has been issued for hiring or engaging people on different posts are similar to the positions which were

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held by the present petitioners. Only minor changes in the nomenclature have been done, since the basic terms and conditions for such appointment remains identical. Since the petitioners have gained enough experience and expertise and have rendered good service, there should be a mandamus issued upon the respondents to continue them, engage them and hire them.

Respondents have filed counter affidavit, which includes Union of India. The stand of Union of India is that these hiring is part of the scheme of the Central Government, envisaged under the 11th plan under National Programme for Prevention and Control of Cancer, Diabetics, Cardiovascular Disease. Funds are being made available to the State from time to time and hiring is done strictly in terms of the policy and guidelines issued by them. Since certain programmes have been stopped after sometime and taking into consideration the inputs as well as the future thrust areas new policy and guidelines has been issued to the State, based on which the State Health Society is required to take decision.

The State Health Society has filed a counter affidavit. They take a plea that they have obviously no authority of decision making in such hiring. The hiring is

done on the basis of funds available by Central Government. They are bound by the guidelines issued by them, otherwise they are going to be in dire position, since they have no capacity or funds available to hire anybody, independent of or beyond the guidelines issued by the Union of India.

The submissions of the counsel for the petitioners are not appreciable. They knew their status from the day they were hired, as not only the details have been given in the appointment letter but also the conditions attached thereto. It is a pure contractual engagement, which does not create any right beyond the period of such engagement and it is not for the Courts to decide and direct that the respondents will continue such hiring even beyond the period of contract above the guidelines and policy of Union of India or to sustain a contract or relationship by way of a mandamus.

These are matters where no interference is warranted by issuance of any directive under Article 226 of the Constitution of India. Though the Court does agree that certain decisions of such kind can be amenable to judicial scrutiny under Article 226 of the Constitution of India. But in absence of those elements of arbitrariness as such and the policy not having been



declared to be bad or ultra vires by any Court of law, the relief, which the petitioners are seeking cannot be granted to them. A fresh advertisement, demanding new applications for various posts with new or similar kind of qualifications has been already advertised. Everybody or anybody who have qualifications and are fulfilling the eligibility criteria, have freedom to participate and engage in such relationship, but the same cannot be directed by this Court.

In view of the aforesaid facts and circumstances, writ application is dismissed.

(Ajay Kumar Tripathi, J.)

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