

IN THE HIGH COURT OF JUDICATURE AT PATNA**Letters Patent Appeal No.1628 of 2014****In****Civil Writ Jurisdiction Case No. 15674 of 2013**

=====

1. Dr. Deeraj Kumar @ Dr. Deeraj S/O Sri B.M. Pandey the
Ex- Epidemiologist District health society Begusarai (Bihar)
resident of 46, doctors colony, R.M.C.H. campus, Ranchi
District - Ranchi (Jharkhand) APPELLANT

Versus

1. The State of Bihar through
2. The Executive Director, cum, Secretary, Health Society,
Shekhpura Patna, (Bihar).
3. The civil surgeon, cum member secretary, District Health
Society, Begusaria (Bihar).
4. The surveillance officer, IDSP health society Shekhpura
Patna.
5. The District programme Manager District Health Society
(Sadar Hospital Campus), Begusarai, (Bihar)

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Amarendra Nath Tiwary, Advocate

For the Respondent/s : Mr. Kishore Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI**AND****HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

CAV ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH)**

4 07 -01-2015

This appeal is preferred against the order,
dated 22.8.2013, passed in C.W.J.C. No.15674 of 2013,
whereby a learned single Judge of this Court has rejected
the prayer of the petitioner to issue directions to the
respondents to make payment of salary for the period from
24.1.2011 to 6.4.2012, in exercise of the powers under
Article 226 of the Constitution of India, the ground of



rejection being that the respondents had disputed the very fact that the petitioner had worked during the said period.

2. The appellant claims to have been working as District Epidemiologist in Health Society, Begusarai. He filed a writ application seeking direction to the respondents to make payment of his salary for the period from 24.1.2011 to 6.4.2012. The writ application gave rise to C.W.J.C. No.15674 of 2013. The appellant, in support of his submissions, relied upon a certificate, dated 25.7.2011, said to have been issued by the Civil Surgeon-cum-Member Secretary, District Health Society, which was also claimed to have been counter-signed by the Additional Chief Medical Officer, Begusarai.

3. The learned single Judge found the reliance of the appellant on the certificate, dated 25.7.2011, misplaced inasmuch as the certificate, in question, was, according to the learned single Judge, proof of the fact that the writ petitioner-appellant had worked till 25.7.2011 and not up to 6.4.2012. This apart, the learned single Judge has also taken note of the fact that the Civil Surgeon had disputed the claim of the writ petitioner that he worked regularly from 24.1.2011 to 6.4.2012.

4. As the working of the appellant is disputed

by his employer, the learned single Judge declined to go into the issue in a proceeding under Article 226 of the Constitution of India. It is trite that disputed questions of fact are not, ordinarily, determined in a Writ proceeding under Article 226 of the Constitution of India. In the context of the facts of the present case, the determination of the disputed question of fact, namely, as to whether the writ petitioner-appellant had or had not worked regularly during the period, in question, required holding of roving enquiry and recording of evidence, which was not tenable in the facts and attending circumstances of the present case.

5. We do not find any error in the order of the learned single Judge. The appeal is, accordingly, dismissed with an observation that if the appellant files a suit in the civil court of competent jurisdiction, the same shall be disposed of in accordance with law, preferably, within a year from the date of institution of the suit.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J.: I agree.

Md.Jamaluddin
Khan

(I. A. Ansari, J.)

U			
---	--	--	--