

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6910 of 2014

=====

Hemant Kumar Chaurasia S/O R.K. Chaurasia Mukundan 42, Mukundan
Bhawan Shakti Nagar Jabalpur Po - Madan Mahal Ps - Madan Mahal, Town
- Jabalpur, District - Jabalpur, Madhya Pradesh - 482001

.... Petitioner/s

Versus

1. The State of Bihar Through The Chief Secretary
2. The Deputy Collector Cum I/C (In Charge) Human Resources, Pariwar Kalyan Bhawan, Sheikhpura, Patna 8000014
3. The State Health Society, Bihar Through The Secretary Health Cum Executive Director, Department of Health And Family Welfares.
4. The Development Commissioner, Bihar, Old Secretariat, Patna
5. The Principal Secretary, State of Bihar, Old Secretariat, Patna
6. The Executive Director, State Health Society, Bihar Pariwar Kalyan Bhawan, Sheikhpura, Patna 8000014

.... Respondent/s

with

Civil Writ Jurisdiction Case No.6870 of 2014

=====

Md. Nasir Hussain S/O Late Md. Nazim Hussain Nazim Manzil, G.N. Ganj,
P.O.Laheria Sarai PS - Laheria Sarai Town - Laheriasarai, District -
Darbhanga, Bihar

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary
2. The Deputy Collector Cum I/C (In Charge) Human Resources, Pariwar Kalyan Bhawan, Sheikhpura, Patna 8000014
3. The State Health Society, Bihar Through The Secretary Health Cum Executive Director, Department Of Health And Family Welfare
4. The Development Commissioner, Bihar, Old Secretariat, Patna
5. The Principal Secretary, State Of Bihar, Old Secretariat, Patna
6. The Executive Director, State Health Society, Bihar Pariwar Kalyan Bhawan, Sheikhpura, Patna 8000014.

.... Respondent/s

Appearance :

(In CWJC No.6910 of 2014)

- | | | |
|------------------------------|---|--------------------------|
| For the Petitioner/s | : | Mr. R.S. Ganguly, Adv |
| For the State of Bihar | : | Mr. GP-3 Santosh Kr. Jha |
| For the State Health Society | : | Mr. K.K. Sinha, Adv |

(In CWJC No.6870 of 2014)

- | | | |
|------------------------------|---|--------------------------|
| For the Petitioner/s | : | Mr. R.S. Ganguly, Adv |
| For the State of Bihar | : | Mr. GP-3 Santosh Kr. Jha |
| For the State Health Society | : | Mr. K.K. Sinha, Adv |

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

21-08-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in both these writ applications being exactly the same, it has to be recorded that the petitioners have assailed the order of their termination dated 07.03.2014, whereby and whereunder, their services were sought to be terminated w.e.f., 07.04.2014.

3. Mr. Ram Shankar Ganguly, learned counsel appearing on behalf of the petitioners while assailing the aforementioned office order of the Bihar State Health Society, has submitted that such termination of services of the petitioners is bad on two grounds:-

(i) Firstly, because the petitioners under the advertisement in question had an impression of continuing in service for a period of three years because such appointment was shown to be made for a period of three years under the advertisement and therefore, if the services of the petitioners were terminated within a few

months, that by itself, would be bad.

(ii) Secondly, according to him, if the order of appointment was issued by the State Health Society, Deputy Collector cum Incharge Human Resources, could not have passed the order of termination.

4. Mr. K.K. Sinha, learned counsel appearing on behalf of State Health Society, on the other hand has submitted that the petitioners cannot rely on any terms of the advertisement, when ultimately, the terms and conditions were reduced in the appointment letter. He has also submitted that the Deputy Collector cum Incharge Human Resources, has been declared by the State Health Society to be competent authority either for issuance of appointment letter or for termination of such appointment. In this regard, he has also referred to the appointment letter of the petitioners which was also issued by the Deputy Collector cum Incharge Human Resources.



5. Mr. Ganguly, in reply submits that the appointment letter was only by way of a communication made by the Deputy Collector cum Incharge Human Resources, and he cannot be treated, to be the appointing authority by merely signing the appointment letter.

6. The dispute in these two cases before this Court is as to what right the petitioner being a contractual employees could enforce in writ jurisdiction. Admittedly, the appointment of the petitioner was made in State Health Society pursuant to application of the petitioners on the post of Bio Medical Engineering Expert under DFID supported SWASTH Programme Management Unit.

7. The order of appointment of the petitioners did not give any tenure and therefore, at least from the terms of appointment, this Court would fail to find that the petitioners were to continue for a period of three years. To that extent, the order of appointment of the petitioner Hemant Kumar Chaurasia (C.W.J.C No. 6910 of 2014)

being relevant is quoted hereinbelow:-



STATE HEALTH SOCIETY, BIHAR
Jay Prakash Singh, B.A.S.
Sr. Deputy Collector-cum-
I/c Human Resource

File No. SHSB/AO Cell/333/12
Letter No. 1748

To,
Hemant Kumar Chaurasia
S/o Shri R.K. Chaurasia
Mukundan, 42 Mukundan Bhavan
Shakti Nagar, Jabalpur, Madhya Pradesh,
Pin-482001

Patna, dated 28/02/2013

Subject: Offer of appointment for the post of Bio Medical Engineering Expert (PPP Cell, SHSB) under DFID supported SWASTH Programme.

Sir,

With reference to your application for the post of Bio medical Engineering Expert (PPP Cell, SHSB) under DFID supported SWASTH Programme, and on the basis of your qualification and the interview you had on 20/02/2013, the State Health Society intends to invite you to join on the above post on fixed salary of Rs. 45,000/-(Consolidated) per month.

You are requested to join on the above post on or before 7th of March, 2013, otherwise the offer will be given to the next waiting candidate.

NOTE: (1) Please produce No objection Certificate (NOC) at the time of joining from your current employer.

(2) (No TA will be given for joining the post)

Yours Sincerely
(Jay Prakash Singh). ”

8. In the background of the contents of the appointment letter is this Court examines the order passed on 07.03.2014, which has been passed after continuance of one year of the service of the petitioner-



Hemant Kumar Chaurasia (C.W.J.C No. 6910 of 2014), it is found that the reason for termination of service was only on account of his services no longer required in the procurement related work of DFID supported SWASTH Programme Management Unit. Thus, it is the non availability of the work, which became the reason for termination of his service.

9. This Court, is not aware and at least nothing has been brought on record by the petitioners to show that the work for them was available and the services of the petitioners were dispensed with by way of pretence of non availability of work.

10. Under such circumstances, when the service jurisprudence do envisage and approve termination of service of even a permanent employee on the ground of non availability of work, this Court is not required to go into the issue of termination of the petitioners in view of their contractual employee inasmuch as it would be very difficult for this Court to hold that the termination of the

services of the petitioners after their continuation for a period of one year is bad, either in fact or in law.

11. Having said so, this Court must clarify that if the reason for removal of the petitioners from services was only non availability of work for them and the petitioners' performance in the period of one year was satisfactory, they shall be entitled in future for being considered for appointment, if the Bihar State health Society take fresh steps for filling of those posts in future inasmuch as by now it is well settled that there cannot be any replacement one set of adhoc/contractual employee by another set of adhoc/contractual employee.

12. At this stage Mr. Ganguly, submits that the some advertisement was issued, but the petitioners did not file their application due to pendency of this writ application. Since, such advertisement is not on record, this Court is not inclined to say anything in this regard.

13. Thus while this Court will not interfere with the order of termination of the services of the petitioners



on account of expiry of a period of more than 15 months, in which, they after being terminated have remained out of service this much has to be reiterated and if and when the post occupied by the petitioners in future would be filled up their cases shall also be considered provided that they also apply for the post as also fulfil the prescribed eligibility criteria.

14. Nothing said in this order however will come in the way of the petitioners in claiming salary for the period they had worked and continued in service as well as the salary for the period of one month by way of notice and if such prayer for payment of salary is made by the petitioner before the concerned Deputy Collector cum Incharge Human Resources, he may look into it and if any amount of salary is found payable, its payment also must be made within a period of one month but if he does not find such claim of the petitioners to be admissible, he must record reasons for non payment of claimed amount of salary and communicate the same to

the petitioners within the aforesaid period of one month.

15. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--