

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12169 of 2011

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Vandana Deo, W/O Sanjay Deo, Resident of A-160, P.C-Colony,
Kankarbagh, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Health Department Govt,
of Bihar, Patna.

2. The Project Director, Bihar State Aids Control Society (Health
Department Govt. of Bihar), Sheikhpura, Patna.

3. The Deputy Director, (VCTC) Bihar, State Aids Control Society (Health
Department Govt. of Bihar), Sheikhpura, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate.

For the Respondent/s : Mr. Ashok Kumar Dubey, Advocate.
Mrs. Mamta Vijaya, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 14-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

sought upon niceties reads as follows:

*"1(i) Issuance of a writ in the nature of writ of certiorari to
quash /set aside a letter bearing its No. 525 dated
27.06.2011, as contained in Annexure-7 of this writ
application whereby and whereunder the respondent
authorities have transferred the petitioner from M.B.B. Jay
Prabha Hospital, Kankarbagh, Patna to P.H.E. Katra,
Muzaffarpur in most arbitrary and whimsical manner
contrary to all the rules and provisions as contained in
various notification and orders of the Society.*

*(ii) Issuance of a writ in the nature of writ of mandamus to
issue a command to the respondent authorities to treat the
petitioner's posting at M.B.B. Jay Prabha Hospital,
Kankarbagh, Patna as her first place of posting/joining and
as such refrain the respondent authorities from disturbing
the petitioner from her present posting at M.B.B.(Model*

Blood Bank) Jay Prabha Hospital, Kankarbagh, Patna."

3. Learned counsel for the petitioner has submitted that once the petitioner was allowed to work in Model Blood Bank Jay Prabha Hospital, Kankarbagh, Patna and the Blood Bank being the part and parcel of the Bihar State Aids Control Society, she had a right to continue in Blood Bank treating her to be discharging duty to the Integrated Counselling and Testing Centre (ICTC) and as such the impugned order, is itself bad both on facts and in law.

4. This Court has examined the issue in the light of the averment made in the counter affidavit and specially paragraph-7 thereof, which more clearly spells out the set up of Bihar State Aids Control Society (hereinafter referred to as 'the Society'). The said Society, in fact, has got three different components, namely, (i) Integrated Counselling & Testing Centre (I.C.T.C.), (ii) Sexual Transmission Disease (S.T.D.) and (iii) Blood Bank.

5. It has to be kept in mind that when a similar submission was made on an earlier occasion this Court, on 02.08.2011, had passed an interim order which reads as follows:

Learned counsel for the petitioner submits that the petitioner has been posted at Jaya Prabha Hospital, Kankerbagh as a Counsellor in the Model Blood Bank since February, 2008. It is submitted by learned counsel that for the first time the post was created and the petitioner was transferred there from Nawadah.

It is urged by learned counsel for the petitioner that no one

would be affected, if the petitioner remains posted at the same place, specially considering the fact that the petitioner's husband is posted in the Secretariat at Patna.

Learned counsel for the State is directed to seek instructions in the matter and file counter affidavit within two weeks from today explaining as to whether the petitioner on the post of Counsellor at the M.B.B., Jaya Prabha Hospital, Kankerbagh can be continued without affecting the right of any other person or not.

Put up on 16.8.2011 in the same position.

In the meantime status quo, as of today, shall be maintained.

6. As a matter of fact this writ application was dismissed for default on 11.02.2015 and thus, the aforementioned interim order of maintaining status quo passed on 02.08.2011 had automatically come to an end. It was however subsequently restored by an order dated 15.04.2015 in M.J.C. No. 664 of 2015 and now has been placed for its final disposal.

7. The respondents, in fact, have also filed their counter affidavit on 26.02.2014 wherein the delay has been explained with reference to the interim order passed by this Court on 02.08.2011 and in this regard paragraph-6 to the counter affidavit, being relevant, is quoted herein below:-

"6. That at the very outset it is submitted that the prayer sought for through the writ application for quashing of letter No. 525 dated 27.06.2011 (Annexure 7 of this writ petition) by which the service of the petitioner was transferred from M.B.B. Jay Prabha Hospital Kankarbagh, Patna to P.H.C., Katra Muzaffarpur and for

issuance of direction to treat the petitioner's posting at Jay Prabha Hospital Kankarbagh, Patna as her first posting/joining, are not maintainable for the reason mentioned hereinafter.

7. That it is stated that there are three components for the post of counsellors, available in the Bihar State AIDS Control Society which are as follows:

(i) Integrated Counseling & Testing Centre (herein referred as I.C.T.C.)

(ii) Sexual Transmission Disease, (herein referred to as S.T.D.)

(iii) Blood Bank.

8. That the Prevention of Parent to Child Transmission herein referred to as P.P.T.C.T. is a component of above mentioned I.C.T.C. which was earlier known as Voluntary Counseling and Testing Centre (herein referred as V.C.T.C.)

9. That the Bihar State AIDS Control Society (herein referred as Society) fills up the vacant post of Counsellors on contractual basis through the open advertisement separately against each component for certain period of time.

10. That it is evident from appointment letter dated 13.02.2007 (Annexure-2 to this writ petition) that the petitioner was appointed as counselor under the component of P.P.T.C.T. (Female Counsellor) at Sadar Hospital Nawada where she continued up to 19.03.2008 due to need of work her extension was granted there.

11. That, it is stated that the petitioner vide letter dated 19.03.2008 was transferred from Sadar Hospital Nawada to Primary Health Centre, Katra, Muzaffarpur in accordance with the need of program where she did not join and ultimately, she was deputed/transferred to other component i.e. Blood Bank at M.B.B. Jay Prabha Hospital, Kankarbagh, Patna considering her application and according to need of work. It is made clear that the petitioner is not contractual appointee of Blood Bank Component rather she was appointed under the

component of I.C.T.C. and according to last contract her period of service came to end on 30.06.2011. She had to sign further agreement for extension of her service. Since, she was not appointed under the Blood Bank component; she could not sign agreement under the Blood Bank component.

12. That due to aforesaid reason her service was returned vide letter No. 525 dated 27.06.2011 (Annexure 7 to this writ petition) to the parent component for extension of service which is under challenge in the present writ application.

13. That it is evident from the above mentioned letter dated 27.6.2011 that the petitioner was not transferred rather her service was returned to her parent component.

14. That it is relevant to state here that the respondent concerned issued order no. 38/664 dated 22.07.2011 to all the concerned including petitioner for executing further agreement for extension of their services and they were directed to sign the agreement within a period of five days from the date of issuance of said letter by the petitioner neither signed her agreement for extension of service nor she bothered to join first place of posting as directed in the said letter. Hence, after the expiry of earlier contractual period i.e. 30.06.2011, she is not a contractual employee of Bihar State AIDS Control Society.

15. That it is further relevant to state here that on the date i.e. 02.08.2011 when status quo was granted by the Hon'ble Court, the petitioner was not holding the post of counsellor at the said place because she had not extended her agreement and till the date she has been continuing there in same manner in the light of status quo order dated 2.08.2011 passed by the Hon'ble Court.

16. That so far explanation sought for vide order dated 02.08.2011 by the Hon'ble Court with regard to whether the petitioner on the post of Counsellor at the M.B.B., Jaya Prabha Hospital, Kankarbagh can be continued without effecting the right of any other person or not is

concerned, it is stated that the recruitment procedure has already been completed for filling up the vacant post under the Blood Bank component and since the petitioner is continuing there taking shelter of status quo order while she is not appointed under the said component, the right of newly recruited person under the said component is being continuously affected.

17. That so far second part of prayer for issuance of direction to treat the petitioner's first place of posting at M.B.B. Jay Prabha Hospital, Kankarbagh and to restrain the respondents not to disturb her said place of posting is concerned, it is evident from the facts stated above that she was neither an employee of Blood Bank component nor her first place of posting was at M.B.B. Jay Prabha Hospital, Kankarbagh, Patna and now she is not even a contractual appointee of Society. So, the said prayer is not tenable in the eye of law.

8. What is still more significant to be noted here is that the petitioner also has filed a reply to the counter affidavit on 10.07.2015 wherein none of the facts mentioned by the respondents have been denied but only sought to be explained by the petitioner that by taking a plea that three components of Bihar State Aids Control Society, namely, I.C.T.C., S.T.D. and Blood Bank have an interchangeable and transferable post of Counsellor from one component to another. In this regard few example of one Savitri Kumari has been cited, who, being counsellor in I.C.T.C., had been posted as Counsellor in the Blood Bank, PMCH, Patna. The petitioner, in fact, has also cited an example of Swarnlata Kumari, who, being earlier Counsellor at I.C.T.C., Bettiah, was

now the Counsellor in Blood Bank NMCH, Patna. Likewise, the petitioner has also cited the case of one Sangeeta Kumari, who was Counsellor in I.C.T.C. is now brought to Blood Bank, DMCH, Darbhanga.

9. The petitioner in her rejoinder affidavit has also taken a plea that there was no question of her signing any fresh agreement because her services were extended up to 31.03.2012 and that in view of order of status quo passed on 02.08.2011 by this Court, she will be deemed to be continuing on the post of Counsellor in Model Blood Bank, Jay Prabha Hospital Kankarbagh, Patna.

10. In presence of the aforesaid pleadings, this Court would find that admittedly, the petitioner's appointment/engagement was made on contractual basis under a scheme which ultimately got merged with I.C.T.C. Her appointment was made for the district of Nawada and, therefore, her post could not become transferable only because she was later on allowed to work for some time in the Blood Bank.

11. By the impugned order, the petitioner's tenure having already come to an end, she had been sent back to I.C.T.C. It is altogether a different matter that she claims that her tenure of appointment in I.C.T.C. even after coming to an end on

13.06.2011 she would be still entitled to continue on her post in view of the order of status quo passed by this Court on 02.08.2011.

12. This Court infact is not required to look into that aspect specially when it has found no error in the decision taken by the authorities whereby and whereunder everyone in Bihar State Aids Control Society has been sought to be sent back to the original component, where his or her appointment was made. That in fact is based on a very rationale principle that none of the post in the three components was transferable in nature. Thus, the petitioner too could work only in I.C.T.C. even if she had been allowed to continue in service after 13.06.2011 without extension of her tenure and/or execution of fresh agreement by her.

13. The issue being raised by the learned counsel for the respondents that the petitioner, in fact, has also not executed any agreement after expiry of the contractual period, would also reinforce the view of this Court that the petitioner has got no statutory right to continue in Blood Bank specially when her parent post on contractual basis is only in ICTC.

14. In view of the aforementioned discussion, this Court also must hold that if a uniform decision has been taken by the Society, a separate entity under the Health Department, to keep

all its three components separate and segregated, namely, I.C.T.C., S.T.D. and Blood Bank, that being a policy matter, this Court would not be in a position to direct continuance of the petitioner in Blood Bank specially when here appointment was made exclusively for the I.C.T.C. project.

15. Thus, the prayer of the petitioner for being continued in I.C.T.C. must be and is hereby rejected.

16. At the same time, this Court would fail in its duty if it does not direct the respondent no. 2 and 3 to look into the aspect as with regard to the orders passed for transferring the services of similarly situated Counsellor in I.C.T.C., namely, Savitri Kumari, Swarnlata Kumari and Sangeeta Kumari specially when it has been found that in case of Savitri Kumari her extension of service for the period 01.06.2014 to 31.03.2015 has been given by allowing her place of posting at Blood Bank PMCH, Patna vide Annexure 10 to the rejoinder affidavit, there cannot be different yardstick for the same set of persons and, therefore, if whatever has been said in para-6 of the rejoinder affidavit of the petitioner is correct. The respondent should also bound to remove Savitri Kumari, Swarnlata Kumari and Sangeeta Kumari.

17. This Court would immediately clarify that as these are subsequent events and was not available to the petitioner at



the time of filing of her writ application in the year 2011 and the aforesaid three persons namely, Savitri Kumari, Swarnlata Kumari and Sangeeta Kumari have also not been made party to this writ application, nothing would be done to their detriment by way of removing them from Blood Bank to their original post of Counsellor in I.C.T.C. without considering the factual matrix of their case as also without affording an opportunity of hearing to them.

18. Nonetheless, having regard to the stand taken by the respondents in their counter affidavit that the post of Counsellor in the three components of Society is not transferable and/or interchangeable, this Court can not become party in perpetuating any illegality which has been allegedly done in the case of Savitri Kumari, Swarnlata Kumari and Sangeeta Kumari inasmuch as right to equality under Article 14 of the Constitution of India is positive concept and cannot be enforced in a negative manner for perpetuating any illegality as was held by the Apex Court in the case of *State of Bihar v. Upendra Narayan Singh*, reported in (2009) 5 SCC 65 as also in the case of *Union of India & Ors. vs. M.K.Sarkar* reported in (2010) 2 SCC 59, wherein it was held as follows:

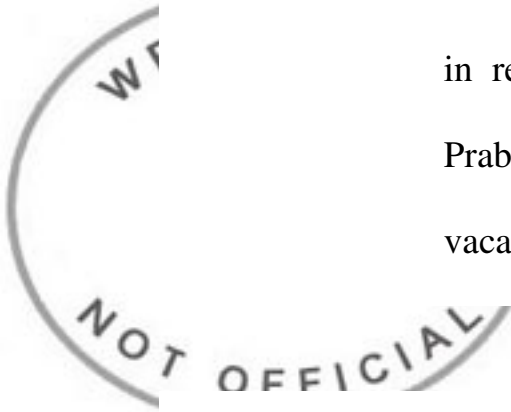
25. *There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a*

*precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to other. (See **Chandigarh Admn. V. Jagjit Singh** reported in (1995) 1 SCC 745, **Gursharan Singh v. NDMC** reported in (1996) 2 SCC 459, **Faridabad Central Government Scan Centre v. D.G. Health Services** reported in (1997) 7 SCC 752, **State of Hariyana v. Ram Kumar Mann** reported in (1997) 3 SCC 321, **State of Bihar v. Kameshwar Prasad Singh** reported in (2000) 9 SCC 94 and **Union of India vs. International Trading Co.** reported in (2003) 5 SCC 437).*

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

19. Thus, for the reasons indicated above, this writ application must fail and is, accordingly, dismissed.

20. As a result whereof, the interim order passed by this Court on 02.08.2011 as with regard to maintaining status quo in respect of the posting of the petitioner at Blood Bank Jay Prabha Hospital Kankarbagh, Patna shall automatically stand vacated.



(Mihir Kumar Jha, J)

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