

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18526 of 2014

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Gautam Bose, S/O Late Manoranjan Bose, Resident of Haziapur
Road, Ward No.-11, P.O+P.S+Distt.-Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health,
Govt. of Bihar, New Secretariat, Patna.
2. The Director in Chief, Health Services, Bihar, New Secretariat, Patna.
3. The Regional Deputy Director, Health Services, Saran Commissionery
at Chapra, Distt.-Saran
4. The Civil Surgeon-cum-Chief Medical Officer, Gopalganj, Distt.-
Gopalganj
5. The Deputy Superintendent, Sub-Divisional Hospital, Hathua, Distt.-
Gopalganj
6. The Principal, A.N.M.School, Hathua, Distt.-Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nawnit Kumar Tiwary, Advocate.

For the Respondent/s : Mr. Pushkar Narayan Sahi, AAG 10
Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 20-07-2015

Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

*"1. .. commanding the respondent no. 4 to accept the
joining of the petitioner against his previous post of Clerk in
A.N.M. School, Hathua, immediately and to allow him to
record his attendance in the duty register and to work
accordingly....*

2. Mr. N.K.Tiwari, learned counsel for the petitioner,
submits that when the order of transfer of the petitioner dated
28.06.2014, as contained in Annexure-1, was issued posting him
from A.N.M. School, Hathua to Sub Divisional Hospital, Hathua
and the same got stayed by the Regional Deputy Director of



Health Services, Saran Division, Chapra dated 03.09.2014, the petitioner cannot be denied to either mark his attendance or work in his previous place of posting at A.N.M. School, Hathua. In this regard, he also relies on a letter of the Director-in-Chief, Health Services dated 26.03.2015, which according to him has been passed by the Director-in-Chief directing the Civil Surgeon, Gopalganj to make payment of salary of the petitioner.

3. Mr. Pushkar Narayan Shai, learned AAG-10, on the other hand, has submitted that first of all, the alleged transfer of the petitioner from A.N.M. School, Hathua to Sub Divisional Hospital, Hathua, strictly speaking, cannot be said to be an order of transfer because neither the place of posting has been changed nor the petitioner has been in any way adversely effected in joint cadre of Clerk of Mufassil Establishment, Hathua, which is under the control of Civil Surgeon, Gopalganj. In this regard, he has submitted that there is a statutory cadre rule, namely, Bihar Health Field Clerical Cadre Rules, 2014, which clearly lays down that it is the Civil Surgeon of the District, who shall be the cadre controlling authority and the Director-in-Chief alone, being the Head of the Department, shall be the supervising authority. He, therefore, is of the view that the order passed by the Regional Deputy Director of Health staying the order of transfer and posting

of the petitioner dated 28.06.2014 was itself wholly without jurisdiction and as such the petitioner in all fairness ought to have joined in the Sub Divisional Hospital, Hathua.

4. Learned counsel for the petitioner, in reply, has submitted that in view of the order of the Director-in-Chief dated 26.03.2015, it shall be deemed that the Head of Department had also approved the order of the Regional Deputy Director of Health staying the order of transfer of the petitioner.

5. Having regard to the aforementioned submissions, this Court would find that when the petitioner was posted from A.N.M. School, Hathua to Sub Divisional Hospital, Hathua on the post of Clerk, he had also been directed by the order of the Civil Surgeon dated 27.08.2014 to hand over the charge. By the said order, it has also been made clear that if the petitioner does not hand over the charge within a period of one week, he would be subjected to departmental proceeding after being placed under suspension.

6. In that view of the matter, this Court will not find any justification for the petitioner in placing reliance on the order of the Regional Deputy Director of Health Services dated 03.09.2014, which as noted above, is wholly without jurisdiction because at no point of time, the said authority namely, the

Regional Deputy Director of Health Services had ever been vested with power of reversing the order of transfer passed by the Civil Surgeon, the cadre controlling authority.

7. The over emphasis placed by the learned counsel for the petitioner on the order of the Director-in-Chief is also wholly misplaced because what is prohibited by the rule cannot be ignored by the Director-in-Chief.

8. As noted above, the petitioner's transfer was made by the cadre controlling authority, namely, the Civil Surgeon, which had to be interfered only by the Director-in-Chief, that having been not done, the alleged direction by the order of the Director-in-Chief dated 26.03.2015, in presence of cadre rules, also will not vest any right to the petitioner much less, he may lead to any direction from this Court.

9. Mr. Sahi, however, has submitted that the issue has been now sought to be resolved by a recent letter of the Director-in-Chief dated 20.07.2015 wherein he has directed that the issue of transfer of the petitioner should be examined in the light of the policy/guideline issued by the Directorate of Health dated 31.05.2013 and take a fresh decision, if such order of transfer of the petitioner dated 28.06.2014 had run contrary to the aforementioned guideline.

10. In that view of the matter, this Court, without interfering with the transfer order of the petitioner dated 28.06.2014, would only direct the Civil Surgeon, Gopalganj to comply the directions given by the Director-in-Chief in his letter dated 20.07.2015 within a period of three months from the date of receipt of a copy of this order. In the meantime, if the petitioner has not reported for duty in Sub Divisional Hospital, Hathua, he has already incurred risk, as already intimated to him by the Civil Surgeon, Gopalganj in his letter dated 27.08.2014.

11. This Court, in fact, would find something devilish on the part of the petitioner who, in fact, has come out to question a table transfer in the sense that the petitioner was working at A.N.M. School, Hathua and was sought to be shifted from one place to another at Hathua itself, when both posts are part of the joint cadre of the Clerk.

12. With the aforementioned observation, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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