

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.328 of 2014

In

Civil Writ Jurisdiction Case No. 13764 of 2013

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1. Vinay Kumar Shahi Son Of Late Badrinarayan Shani Village + Post Chakna, Via - Saraiya, Police Station - Saraiya, District - Muzaffarpur
 2. Anwar Durrani Son Of Shan Ahmed Chanwar Azad Road, Mohanane Lane, Muzaffarpur
 3. Binod Kumar Yadav Son Of Bankey Ray Gurmiya East Tola, Hazipur, District - Vaishali
 4. Basant Kumar Singh Son Of Sri Ram Vinayak Singh Noor Nagar, Chapra, Sarai (P.S. Jalalpur)
 5. Arun Kumar Son Of Kapildeo Shahu Village + Post Lawarkala, Police Station Baniyapur, District - Saran
 6. Susheel Kumar Singh Son Of Sachidanand Singh Village - Mane, Post Daudpur, District - Saran
 7. Amaresh Kumar Singh Son Of Mr. Ranjeet Singh Hemnagar, Chapra, District - Saran
 8. Ameet Kumar Son Of Kamakhya Prasad Bihar Watch Camp, Salempur, Chapra, District - Saran
 9. Anil Kumar Singh Son Of Rameshwar Prasad Companybagh Colony, East Bhagwan Bazar, Chapra
 10. Sudhir Kumar Son Of Shivnath Singh Rampur, Hakibaba Ke Tola, Post Mahamadpur, Garkha, District - Saran

.... Appellant/s

Versus

1. The State Of Bihar
2. The Secretary - Cum - Executive Director, State Health Society, Saran
3. The District Magistrate - Cum - Chairman, District Health Society Saran
4. The Civil Surgeon - Cum - Secretary, District Health Society, Saran
5. The District Programme Manager, Saran At Chapra
6. Ram Narayan Prasad Son Of Sri Jalal Thakur, West Mahabir Nagar, 70 Feet Bye Pass, P.S. Beur, Patna - 2
7. Sunil Kumar Son Of Ram Vinay Ray Road No.3, Road No.10, Gardanibagh, P.S. Gardanibagh, Patna
8. Anil Kumar Late Manindra Verma, Manjhi South Tola, P.O. Manjhi, Saran
9. Md. Aslam Son Of Rahanuddin Miyan At - Agauthar Sundar, P.O. Agauthar Nada, P.S. Isuapur, Saran, Chapra
10. Arbind Kumar Son Of Bimalchand Prasad Gudri Bazar Chawni, Saran

.... Respondent/s

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Appearance :

For the Appellant/s : Dr. Umashankar Prasad, Sr. Advocate
With Mr. Santosh kumar

For the Respondent/s : Mr. Gautam Bose, AAG-8

For Respondent no.2 :- Mr. K.K. Sinha,

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
 ORAL ORDER
 (Per: **HONOURABLE MR. JUSTICE I. A. ANSARI**)

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12-01-2015

1. An order, dated 24.7.2013, passed by learned single Judge in CWJC No. 13764 of 2013 (Vinay Kumar Shahi Vs. State of Bihar & ors) dismissing the writ application filed by the appellants-writ petitioners under Article 226 of the Constitution of India, is under challenge in the present appeal under Clause X of the Letters Patent of this Court.

2. There is no controversy over basic facts. The appellants were initially appointed, on contract basis, with fixed *honorarium* as Health Manager under the District Health Society, Saran, at Chapra, for a period of two years by an order issued, in this regard, vide memo dated 21.3.2007. They were subsequently re-engaged, on contractual basis, with *fixed honorarium* for a further period of three years by an order issued by the office of District Health Society, Saran, at Chapra, vide Memo No. 242, dated 02.07.2009. The period of re-engagement of the writ petitioners-appellants apparently came to an end on completion of three years with effect from 02.07.2012.

3. The Civil Surgeon-cum-Secretary, District Health Society, Saran, at Chapra, thereafter, came out with an order issued, vide Memo No. 679, dated 19.7.2012, mentioning therein

that the contractual appointment of the petitioners had not been extended and the concerned Medical Officers were required to assume charge from them.

4. The petitioners approached this Court challenging the said office order, dated 19.7.2012, whereby renewal of their contract was declined, by filing writ petition under Article 226 of the Constitution of India giving rise to CWJC No. 14075 of 2012. They took the plea in the said writ proceeding that they had a right to continue so long as the Project for which they were appointed, on contract basis, continued. They relied upon Clause IV of the instructions, dated 13.1.2009, (Annexure-4 to CWJC No. 13764 of 2013) so as to contend that their contract should have been renewed. Clause IV of the said instruction, dated 13.1.2009, provided that if their work was satisfactory, the contract might be renewed. This Court refused to accept the plea that the petitioners had any right to continue so long as the concerned Scheme continued. This Court held in the said order dated 22.8.2012, that the petitioners had accepted the contractual appointment with the conditions and durations of contract voluntarily. Referring to the instructions, dated 13.1.2009 (supra), this Court took note of the fact that if



performances was found to be satisfactory, the contract might be renewed for a period of three years as was done in case of the petitioners. This Court also held that re-engagement of the petitioners, for a period of three years, vide Memo No. 242, dated 02.07.2009, was nothing, but renewal of contractual appointment for two years vide Memo, dated 21.03.2007. This is to be noted that these petitioners had raised plea of infringement of Article 14 of the Constitution of India alleging arbitrariness and discrimination on the part of the respondents in not renewing their contractual engagements after completion of three years of renewal of their engagement on the ground that in case of certain other persons, the contracts had been renewed. This Court in the said order, dated 22.8.2012, dealing with the point of unequal treatment, held as follows:-

“The allegations for discrimination and arbitrariness with regard to those whose contracts have been renewed on 19.7.2012 are not adequate and leaves the Court dissatisfied. Those whose contracts have been renewed have also not been impleaded as party respondents. If the petitioners represent and demonstrate that their performance has been better or at least at par with those whose contracts have been renewed, surely, the respondents have an obligation to consider their representation under Article 14 of the Constitution within a maximum period of three months from the date of receipt/production of such application along with a copy of this order.”



4. The petitioners did not prefer any appeal against the order of this Court and approached the District Magistrate, Saran, who is said to be *ex-officio* Chairman of the District Health Society, Saran, in the light of the said order of this Court, dated 22.8.2012, passed in CWJC No. 14075 of 2012. The representation, filed by the petitioners, came to be rejected by the District Magistrate, Saran, by an order, dated 8.4.2013 (Annexure-15 to CWJC No. 13764 of 2013) on the ground that the petitioners could not produce any evidence in support of the plea of discrimination and they had no any right of renewal of their contractual engagement made for a fixed period.

5. Challenging the order of the District Magistrate-cum-Chairman of the District Health Society, Saran, at Chapra, the petitioners preferred CWJC No. 13764 of 2013, which came to be dismissed by an order, dated 24.7.2013, passed by the learned Single Judge, which order is under challenge in the present appeal.

6. Learned Single Judge, on the basis of the pleadings on record, dismissed the writ application on the ground that the petitioners were made to appear in a computer test for the purposes of considering their cases for grant of extension of engagement and thereafter petitioners had appeared in the test, they failed and, therefore, they were not granted extension. Learned Single Judge

further held that the petitioners were contractual employees and they did not have protection under Article 311 of the Constitution of India and thus, dismissed the writ application.

7. We have heard Mr. Uma Shankar Prasad, learned Senior Counsel appearing on behalf of the appellants, Mr. Gautam Bose, learned Additional Advocate General No.8 appearing on behalf of the State Respondents as well as Mr. K.K. Sinha, learned counsel appearing on behalf of respondent no.2 (State Health Society) at length.

8. Mr. Prasad, learned Senior counsel, has submitted that refusal to grant extension to these petitioners was an arbitrary exercise of power by the respondent authorities and has contended that the respondents were under obligation to grant extension of contract in favour of these petitioners in the light of the instructions as contained in letter, dated 13.1.2009, read with letter, dated 29.12.2011, issued vide Memo No. 32849 under the signature of the Secretary, Health, Government of Bihar-cum- Executive Director, State Health Society, Bihar. The said letter, dated 29.12.2011, has been brought on record by way of Annexure-2 to the supplementary affidavit filed on behalf of the petitioners in the present proceeding. The said letter, dated 29.12.2011, contemplates extension of services of

the employees, working on contract basis, in District Health Society for a further period of three years. The letter, however, does not cast any obligation to extend the period of contract.

9. Mr. Prasad has vehemently submitted that the respondents adopted pick and choose policy in the matter of grant of extension to the persons engaged as Health Managers for fixed period. However, we do not find any material on record in support of the submission that similarly situated persons, who were engaged for fixed period as Health Managers, in the District Health Society, Saran, at Chapra, were granted extension, ignoring the cases of these petitioners. We are not convinced by the plea that there has been violation of Article 14 of the Constitution of India. What we find from the material on record is that the petitioners were not granted further extension of their engagement as they were not found suitable for such extension by competent authority. This Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, need not interfere with such satisfaction recorded by the employer, particularly, when the engagement was for a fixed period.

9. We do not find any infirmity in the reasoning assigned by the learned single Judge, while rejecting the writ

petition that they participated in the computer test and after having failed, they could not question the mode of granting of extension of their contractual service.

10. In any event, we are of the view that the appointments of these petitioners-appellants, as Health Managers, were contractual in nature for a fixed period. Their engagement on such basis is governed by the terms and conditions of the contract. The appointment of these petitioners came to an end upon completion of three years with effect from 2.7.2012 as indicated above. The petitioners have failed to make out a case of arbitrariness or discrimination and, thus, infringement of fundamental rights, guaranteed under Article 14 of the Constitution of India, could not be established.

11. The Supreme Court, in case of Director Institute of Management Development Vs. Pushpa Srivastava, reported in (1992) 4 SCC 33, has laid down that where the appointment is contractual and by efflux of time, the appointment comes to an end, the appointee would have no right to continue in the post. The right of the petitioners to continue, in the post of Health Managers, came to an end on completion of three years with effect from 2.7.2009.

12. We do not find any merit in the present appeal, which is accordingly, dismissed. There shall, however, be no order as to costs.

(I. A. Ansari, J)

ArunKumar/-

(Chakradhari Sharan Singh, J)

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