

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5260 of 2015

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Md. Sarfraz Alam, Son of Md. Idris Alam. Resident of Mohalla - Sarif Ganj, Line Bazar, P.S.- K.Hat, District - Purnia.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Chairman-cum-Development Commissioner, Government of Bihar, Patna.
3. The Bihar Medical Services and Infrastructure Corporation Limited (BMSICL), Biscomaun Bhawan, Gandhi Maidan, Patna - 800001, through its Managing Director.
4. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited (BMSICL), Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
5. The Deputy General Manager, Logistics, Bihar Medical Services and Infrastructure Corporation Limited (BMSICL), Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
6. The Manager, Quality Control, Bihar Medical Services and Infrastructure Corporation Limited (BMSICL), Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.

.... Respondents

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Appearance :

For the Petitioner/s : Md. Nurul Hoda, Adv.
For the Respondent State: Mr. Ashok Kumar Choudhary, AAG13
Mr. Shahzad Hassan Khan, AC to AAG13
For BMSICL : Mr. Tuhin Shankar, Adv.
Mr. Siddharth Shankar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

6 23-06-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

“(i) For issuance of appropriate writ/writs, order/orders in the nature of certiorari for quashing the impugned order contained in letter No. BMSIC/20050/19-2013/2478 dated 17.11.2014 (Annexure 1) with all consequential benefits including reinstatement into service issued by respondent



no.4, i.e. the Managing Director, Bihar Medical Services and Infrastructure Corporation Limited (BMSICL), Biscomaun Bhawan, Gandhi Maidan, Patna- 800001 whereby and whereunder the petitioner has been terminated from service (contractual) from the post of Assistant Manager, Purnia Ware House of the Bihar Medical Services and Infrastructure Corporation Limited (hereinafter called as BMSICL) on wrong and baseless allegation alleged to have been proved that the petitioner has accepted in his reply that sub-standard medicine was distributed to other Stores/ Hospitals/ though the aforesaid allegation is not only false and baseless, rather, the same was not the allegation leveled in the show cause, which was asked from the petitioner on 18.10.2014 and therefore, the impugned order is wrong, malafide, pre-targeted, purported and has been issued to victimize the petitioner with ulterior motive to save the skin of the responsible higher authorities of the BMSICL.

(ii) For further issuance of an appropriate writ of certiorari for quashing the impugned order dated 27.1.2015 (Annexure 2) passed by respondent no.2 i.e. the Chairman cum the Development Commissioner, Govt. of Bihar, Patna (the appellate authority) whereby and whereunder the appeal of the petitioner filed against the impugned order dated 17.11.2014 (Annexure 1) has been rejected with wrong perverse finding and as such the appellate order upholding the impugned order is also wrong and illegal and as such, the same is liable to be quashed.

(iii) The petitioner further prays for adjudication and for

holding that false, frivolous and unfounded allegations have been leveled against him and he has been terminated from his service wrongly, illegally and maliciously in a predetermined and pre-targeted manner.”

3. Learned counsel for the petitioner while assailing the impugned order passed by the Managing Director of the Bihar Medical Services and Infrastructure Corporation Limited (hereinafter referred to as ‘the Corporation’) as also the appellate order passed by the Development Commissioner cum Arbitrator has submitted that the petitioner has been subjected to an order of punishment by way of removal from the service on a wholly non est and non-existing charges. In this regard he has referred to various documents and in particular the order of the appellate authority to draw his point head on that when he is Assistant Godown Manager in Purnia Ware House of the Corporation had come to know regarding supply of a sub-standard medicine, he had immediately sought instruction of his higher authorities from the Head office of the Corporation but then if no instruction was received by him from the higher authorities, he could not be blamed for any fallout which had taken place on account of the death of a person using such sub-standard medicine.

4. Attractive though the aforementioned submission may be, this Court would find it difficult firstly to go into the merit of



the charges, inasmuch as three facts are admitted. Firstly, that the petitioner was an Officer and not a Peon or a Clerk. Secondly, he was well aware that he had issued medicine to certain places including Bhagalpur Medical College and those medicines were found to be sub-standard in quality. Thirdly, he did not issue any direction to the concerned places where medicines were supplied with regard to quality of the medicine being sub-standard and prohibiting use of such medicine by them. Therefore, the petitioner cannot escape his responsibility as with regard to the death which had occurred on account of use of that sub-standard medicine supplied by him to Bhagalpur Medical College. The explanation of the petitioner that he had sought instruction from the Head office of the Corporation and that such instruction did not come cannot absolve him of the responsibility that he was sharing in capacity of the Assistant Godown Manager of the Corporation.

5. The aforesaid aspect of the matter has been considered by the appellate authority in paragraph no.10 of the impugned order which is quoted hereinbelow:

“10. I agree with the reasons cited by the BMSICL for the termination of the services of the appellant. The argument advanced by the appellants, are not acceptable. Having informed about the substandard quality of medicine by the



BMSICL Headquarters, he should have forwarded the message to the drug recipient units including JN Medical College Hospital, Bhagalpur for necessary action. As a store incharge, he knew where the said medicine had been dispatched earlier. It was incumbent upon him to apprise of the laboratory test report to those recipient units. There has been direction of duty on his part.”

6. Additionally this court would find that the petitioner was only continuing in service of the Corporation on contract basis and his period of contract has already come to an end. If the petitioner, therefore, in performance of his duty was found to be negligent, the Corporation having followed the principles of natural justice i.e. by issuing of show cause notice and also considering the show cause reply filed by him has not committed any error in removing the petitioner, inasmuch as the petitioner has got no protection of the provision of Article 311(2) of the Constitution of India. This Court in exercise of power under Article 226 of the Constitution of India cannot sit as an appellate authority and weigh the evidence in relation to the charges. It is only when this Court can find that an order of punishment has been passed on a wholly non est and non-existing material or there being no evidence in support of the charges that a limited judicial review can be made for finding out the correctness of the order of

punishment. This case, however, will not be one of them, inasmuch as the facts as noted above are clear and admitted.

7. Thus, for the reasons indicated above, this Court does not find any error in the impugned orders passed by the Managing Director of the Corporation and its affirmance in appeal by the Development Commissioner cum Arbitrator. As a matter of fact moment the petitioner was bound by some arbitration clause, his remedy ought to have been assailing the order of the appellate authority before the competent civil court where the evidence could have been gone into after examining the issue sought to be raised by the petitioner in this writ application.

8. Be that as it may, now that when the petitioner has moved this Court and this Court has also not found any error in the impugned orders that should be the end of pursuit of the legal remedy being sought by the petitioner.

9. Thus, for the reasons indicated above, this writ application fails and is accordingly dismissed.

(Mihir Kumar Jha, J)

surendra/-

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