

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2681 of 2015

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1. Chitranjan Prabhakar S/o Sri Dhuri Das R/o Vill.- Lalachak , PO- Tej Bigha,
P.S- Kako, District- Jehanabad,.

.... Petitioner/s

Versus

1. The Union of India through Director General (NCD), Directorate General of Health Services, Ministry of Health and Family Welfare, Nirman Bhawan New Delhi.
2. The State of Bihar through Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Executive Director, State Health Society, Bihar, Patna.
4. The Addl. Executive Director, State Health Society, Bihar, Patna. .
5. The Sr. Dy. Collector-Cum-In-charge Human Resources , State Health Society , Bihar, Patna
6. The State Programme Officer, State Health Society , (NPCDCS), Bihar Patna.
7. The District Magistrate-Cum-Chairman, District Health, Kaimur.
8. The Civil Surgeon cum Member Secretary, District Health Society, Kaimur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1638 of 2015

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1. Surjit Kumar S/o Sri Suresh Prasad Sah, R/o Mohalla- Dalhatta, P.S.- Kotwali, District- Munger
2. Kunal Kumar, S/o Late Lala Prasad, R/o Vill.- Chapotipipar, P.S.- Ghosi, District- Jehanabad
3. Abu Nasar Arif, S/o Late Masroor Alam, R/o Mohalla- Guljarbagh, P.S.- Thana Chowk, Bikramganj, District- Rohtas
4. Namit Kumar S/o Late Triguna Prasad, R/o Vill. + P.O.- Barhangopal, P.S. and District- Siwan
5. Kumar Nayan, S/o Sri Vishwanath Prasad, R/o Mohalla- Mazar Gali, P.S.- Shastrinagar (Sheikhpura), District Patna

.... Petitioner/s

Versus

1. The Union of India through Director General (NCD) Directorate General of Health Services, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi
2. The State of Bihar through Principal Secretary, Department of Health, Govt. of Bihar, Patna
3. The Executive Director, State Health Society, Bihar, Patna
4. The Addl. Executive Director, State Health Society, Bihar, Patna.
5. The Sr. Dy. Collector-cum-Incharge, Human Resources, State Health Society, Bihar, Patna
6. The State Programme Officer, State Health Society (NPCDCS) Bihar, Patna
7. The District Magistrate-cum-Chairman, District Health Society,

Vaishali/Muzaffarpur/Rohtas/Kaimur/East Champaran and West Champaran
8. The Civil Surgeon-Cum-Member Secretary, District Health Society,
Vaishali/Muzaffarpur/Rohtas/Kaimur/East Champaran and West Champaran

.... Respondent/s

Appearance :
(In CWJC No. 2681 of 2015)

For the Petitioner/s : Mr. Raj Kumar Singh
For the Respondent State : Mr. Sanjay Kumar Ojha, AC to GP18
For the Union of India : Mrs. Kanak Verma
For the State Health
Society : Mr. K. K. Sinha

(In CWJC No. 1638 of 2015)

For the Petitioner/s : Mr. Raj Kumar Singh
For the Respondent State : Mr. GAUTAM BOSE, AAG 8
For the Union of India : Mrs. Kanak Verma
For the State Health
Society : Mr. K. K. Sinha

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 02-04-2015

A K Tripathi, J.

Heard counsel for the parties.

2. There are six petitioners in these two writ applications. All of them have been appointed on contract basis with clear stipulation in their letters of appointment that such appointment does not create any right in their favour or any claim for their continuance or regularization. They even had to execute a bond in this regard, as would be evident from reading of Annexure-2, dated 2/8/2012. Along with the appointment letter, contained in Annexure-2, the details of the terms and conditions of the agreement for such engagement have been quite extensively incorporated and included. Same and similar kind of agreement has been entered into by other petitioners as well on the post on which they were engaged in a temporary capacity.

3. When the respondent-State authorities decided to do away with their engagement for the reasons indicated in Annexure-4, both the writ

applications have been filed, seeking quashing of Anneuxre-4, dated 9.1.2015.

4. Many a things have been said that one contractual engagement cannot be substituted by another contractual engagement. New advertisement, which has been issued for hiring or engaging people on different posts are similar to the positions which were held by the present petitioners. Only minor changes in the nomenclature have been done, since the basic terms and conditions for such appointment remains identical. Since the petitioners have rendered good service, there should be a mandamus issued upon the respondents to continue them, engage them and hire them.

5. Respondent Union of India had filed counter affidavit in a similar and identical matter taking the stand that these hiring is part of the scheme of the Central Government, envisaged under the 11th Plan under National Programme for Prevention and Control of Cancer, Diabetics, Cardiovascular Disease. Funds are being made available to the State from time to time and hiring is done strictly in terms of the policy and guidelines issued by them. Since certain programmes have been stopped after some time and taking into consideration the inputs as well as the future thrust areas new policy and guidelines has been issued to the State, based on which the State Health Society is required to take decision.

6. The State Health Society has also filed a counter affidavit. They take a plea that they have obviously no authority of decision making in such hiring. The hiring is done on the basis of funds available by Central Government. They are bound by the guidelines issued by them, otherwise they are going to be in dire position, since they have no capacity or funds available to hire anybody, independent of or beyond the guidelines issued by the Union of India.

7. The submissions of the counsel for the petitioners are not appreciable. They knew their status from the day they were hired, as not only the

details have been given in the appointment letter but also the conditions attached thereto. It is a pure contractual engagement, which does not create any right beyond the period of such engagement and it is not for the Courts to decide and direct that the respondents will continue such hiring even beyond the period of contract above the guidelines and policy of Union of India or to sustain a contract or relationship by way of mandamus.

8. These are matters where no interference is warranted by issuance of any directive under Article 226 of the Constitution of India. Though the Court does agree that certain decisions of such kind can be amenable to judicial scrutiny under Article 226 of the Constitution of India but in absence of those elements of arbitrariness as such and the policy not having been declared to be bad or ultra vires by any Court of law, the relief, which the petitioners are seeking cannot be granted to them. A fresh advertisement, demanding new applications or various posts with new or similar kind of qualifications has been already advertised. Everybody or anybody who have qualifications and are fulfilling the eligibility criteria, have freedom to participate and engage in such relationship, but the same cannot be directed by this Court.

9. In view of the aforesaid facts and circumstances, both the writ applications are dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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