

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4133 of 2014

In

Civil Writ Jurisdiction Case No. 3600 of 2013

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Dr. Shyam Sunder Singh Son of Sri Aliyar Singh Resident of-Flat No.203,
SS Enclave Ashiyana Nagar, P.S.-Rajivnagar, District-Patna at present
Presently Working As Director, Indigenous Medicine, Indigenous Medicine
Directorate, Department Of Health, Government Of Bihar, Patna.

.... Petitioner/s

Versus

1. Dr. Raindra Prasad Singh Son of Ram Kritarth Resident of Village-
Cheron, P.S.-Sarmera, District-Nalanda, At present Working As District
Indigenous Medical Officer, Patna, Department Of Health, Government
Of Bihar.
2. Dr. Bharat Upadhyay Son of-Late Anand Van Upadhyay Resident of
Village-Suhwal, District-Gajipur In The State Of U.P., Presently
Working As District Indigenous Medical Officer, Bhojpur At Ara,
Department Of Health, Government Of Bihar.
3. Krishna Mohan Choubey Son of-Late Kedar Nath Choubey Resident of
Village-Sonpa, P.S.-Rajpur, District-Begusarai, Presently Posted As
District Indigenous Medical Officer, At Hajipur.

----- Writ Petitioners

4. The State Of Bihar
5. The Principal Secretary, Department Of Health, Government Of Bihar,
Patna.
6. The Secretary, Department Of Family Welfare, Incharge Ayush,
Government Of Bihar, Patna.
7. The Joint Secretary, Department Of Family Welfare, Incharge Ayush,
Government Of Bihar, Patna.
8. The Principal Secretary, Department Of Finance, Government Of Bihar,
Patna.
9. The Accountant General, Bihar, Patna.

.... Respondents in writ Petition/Opp. Parties

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Appearance :

For the Petitioner/s : Mr. Ujjwal Kumar Sinha
For the Respondent s 1 to 3 : Mr. Banwari Sharma
For the Respondents 4 to 9 : Mr. Rai Shjivajee Nath, AAG-3

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 18-05-2015

Heard learned counsel for the parties.

Learned counsel for the petitioner has submitted that
there was an apparent error in the order dated 7.5.2014 while



disposing of the writ application CWJC No. 3600 of 2013 to the effect that the respondent no.7 was said to have already retired from service and, therefore, the vacancy created on account of his retirement could also be filled up in accordance with law. He explains that the respondent no.7 of that case who is the petitioner of this case is still continuing in service and has many years of service left to his credit.

Mr. Banwari Sharma, learned counsel for the opposite parties, in this case, does not dispute this basic fact as with regard to creeping of error in recording the factum of retirement of the respondent no.7 of the writ application, who is the petitioner in this case. He, however, submits that there has been a vacancy on the post of Director Indigenous Medicine (Ayurvedic) even in presence of continuance of the respondent no.7 on the post of Director Indigenous Medicine.

Learned counsel for the respondent no.7 in the writ application and the petitioner of this case, however, again come out to say that there is no vacancy on the post of Director, Indigenous Medicine.

Once this Court comes to a conclusion that it had committed an error in recording the fact of retirement of the respondent no.7, it goes without saying that whatever was said



was in the context of the retirement of respondent no.7 cannot be retained in the order of this Court dated 7.5.2014 in C.W.J.C. No. 3600 of 2013. Since the respondent no.7 had not retired from service as on 7.5.2014 or even till today this Court will have no difficulty in deleting the following portion of the order of this Court-

".....It is true, that now respondent no. 7 has already retired from service and there is vacancy on the post of Director, Indigenous Medicine on which adhoc arrangement has been made. The Health Department is waiting for surrender of the post as per the 2010-Rules and steps are to be taken only after the Finance Department communicates its decision about the proposal of the Health Department. Thus the issue of apt infinition, however, cannot be allowed to remain. Learned counsel for the State, however, has assured that a decision may be taken within a period of three months and the concurrence of the Finance Department in the matter would be obtained.

That being so, this Court would direct for taking steps expeditiously for filling up the vacancy on account of retirement of respondent no. 7, so that any person including the writ petitioners of this court who has an opportunity of being considered should not stand deprived only on account of delay.

The order of this Court dated 7.5.2014 is modified to the extent indicated above.

It is however also made clear that notwithstanding modification of the order of this Court dated 7.5.2014, it shall still be open for the opposite parties no. 1 to 3, i.e. the writ petitioners to agitate the issue of filling up the post of Director, Indigenous Medicine Ayurvedic before the appropriate forum and/or court once such post is duly sanctioned and notified by the State Government.

With the aforesaid observation and direction this application for modification is allowed.

(Mihir Kumar Jha, J)

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