

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1694 of 2014

IN

Civil Writ Jurisdiction Case No. 9358 of 2014

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1. Jitendra Kumar S/o Late Dharichan Ram, Resident of Mohalla- Yarpur, P.S. Gardanibagh, Town and District- Patna
 2. Shankar Kumar Saha S/o Late Rashiklal Saha, Resident of Mohalla Salimpur Ahra, P.S.- Kadamkuan, Town and District- Patna
 3. Lallan Prasad S/o Late Sharda Prasad, Resident of Mohalla- Punaichak, P.S.- Shastrinagar, Town and District- Patna
 4. Ashwani Kumar S/o Late Dr. Kapildeo Prasad, Resident of Mohalla Ashoknagar, P.S.- Kankarbagh, Town and District- Patna
 5. Amit Kumar S/o Late Binod Kumar Chaturvedi, Resident of Mohalla Ghagha Gali, P.S.- Chowk, Town and District- Patna.

.... Appellants

Versus

1. The State of Bihar, through the Principal Secretary Health Department, Govt. of Bihar, Patna.
2. The Additional Secretary, Health Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
4. The Under Secretary, Health Department, Govt. of Bihar, Patna
5. Director, Indigenous Medicine, Govt. of Bihar, Patna
6. Principal, Govt. Ayurvedic College, Patna
7. The Under Secretary, Department of Ayush, Ministry of Health and Family Welfare, Govt. of India, New Delhi.
8. Mr. S.K. Sharma Adviser (Ayurveda), Department of Ayush, Ministry of Health and Family Welfare, Govt. of India, New Delhi.

.... Respondents

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Appearance :

For the Appellants : Mr. Banwari Sharma, Advocate
Mr. Shiv Kumar, Advocate
Mr. Sahjanand Sharma, Advocate
For the Respondents: Mr. Mayank Rukhaiyar, AC to GA 1

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 24 -06-2015

An order, dated 05.12.2014, passed by learned single Judge, in CWJC No. 9358 of 2014, is under challenge in the present appeal under Clause 10 of the Letters Patent of Patna High Court. Appellants were writ petitioners in CWJC No. 9358 of 2014 and

are/were working against various non-teaching posts in Government Ayurvedic College, Patna.

2. The writ application was filed by the petitioners seeking quashing of the part of the order issued, vide memo No. 166, dated 10.02.2014, by the Health Department, Government of Bihar, whereby earlier departmental order No. 667, dated 26.07.2013, was cancelled and the transfer/posting made by the Director, Indigenous Medicine had been, thus, made effective.

3. This is to be noted that by the said order of transfer, dated 26.07.2013, issued by the Director, Indigenous Medicine, Government of Bihar, the petitioners were transferred and posted at different places in a routine manner as all of them had completed three years of service at the place of posting, i.e., Government Ayurvedic College, Patna. The original transfer order, dated 26.07.2013, was subsequently stayed by the Health Department, Government of Bihar by an order, dated 26.07.2013, for the purpose of making enquiry as regards genuineness of all such transfers and, for that purpose, a high level three member departmental committee was constituted. The said three member committee submitted its report and, on the basis thereof, the Health Department withdrew its earlier decision as contained in memo No. 166, dated 10.02.2014, and decided to enforce the transfer order, dated 26.07.2013. This was the order, which was under challenge before learned single Judge in CWJC No. 9358 of 2014. Learned single Judge dismissed

the writ application by an order, dated 05.12.2014, which is under appeal herein.

4. From the pleadings on record and submission made on behalf of the appellants, it appears that the main ground, which the petitioners have taken against their transfer, is that the Department of Ayush, Ministry of Health and Family Welfare, Government of India, has planned to upgrade certain eminent institutions of Ayush to the national level institution including the present Government Ayurvedic College, Patna, with a view to fill up the gaps of infrastructure and human resources for optimum functioning and also to provide uniform teaching facilities so that good quality specialists are produced in a good number.

5. A supplementary affidavit has been filed on behalf of the petitioners bringing on record a resolution, dated 08.04.2010, which has been published in Bihar gazette, on 13.04.2010, in order to show that, in principle, it has been decided that the Government Ayurvedic College, Patna, be upgraded as an All India Ayurvedic Institute.

6. Learned single Judge, by the impugned order, has rejected the writ application holding that the authority, which passed the order of transfer, did not lack jurisdiction to pass such order. The learned single Judge came to a specific finding that the petitioners belonged to State cadre in terms of resolution, dated 10.12.2000, brought on record by way of Annexure-A to the counter affidavit

and the petitioners were, therefore, amenable to transfer from their present place of posting.

7. Mr. Banwari Sharma, learned counsel for the appellants, has attempted to convince us that Government Ayurvedic College, Patna, has acquired different status altogether in view of decision of the State Government as well as the Union Government to upgrade Government Ayurvedic College, Patna, as an All India Ayurvedic College.

8. The submission so made by Mr. Sharma is not acceptable to us. The petitioners belong to the same cadre to which other employees holding similar posts in different Government Ayurvedic colleges in the State of Bihar belong. The petitioners cannot be said to have acquired any different status/position in the cadre merely on the basis of some proposal to upgrade the Government Ayurvedic College, Patna, to All India Institute of Ayurveda. There is no dispute that the posts are transferable. Learned single Judge has recorded in the order under appeal that the petitioners have already remained posted in the college for periods ranging between 12-36 years, which finding has not been disputed. No *mala fide* has been alleged nor breach of any statutory rule or even executive instruction has been contended. No question of lack of jurisdiction in issuance of transfer order could be convincingly raised. In such circumstances, it is difficult to question the legality of the order of transfer.

9. Learned counsel appearing for the respondents- the State of Bihar has submitted that at present, there is no proposal to upgrade the Government Ayurvedic College, Patna, as an All India Institute of Ayurveda and, in support of his submission, he has referred to a copy of the letter, dated 29.04.2014 (Annexure-D to the counter affidavit).

10. We do not find any infirmity in the order of learned single Judge, which is under appeal. Transfer is an incidence of service and the order of transfer having been issued by the competent authority, in the facts and circumstances indicated above, we do not see any reason to accept the plea as raised on behalf of the appellants.

11. We do not find any merit in this appeal. The appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, J. : I agree.

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(I. A. Ansari, J.)