

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7459 of 2015

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1. Dr. Lakshmi Narayan Singh. Son of Late Indra Deo Singh. Resident of village - Patar, P.S.- Ashwan, District - Siwan, at present residing at 104, Santosha Complex, Bandar Bagicha, Fraser Road, Patna - 1

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
3. The Director, Health Services, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
5. The Deputy Secretary, Department of Health, Govt. of Bihar, Patna.
6. The Principal, Patna Medical College and Hospital, Patna.
7. The Superintendent, Patna Medical College and Hospital, Patna.
8. The Civil Surgeon, Bettiah, Bihar.
9. Deepak Kumar. S/o not known to the petitioner, the then Principal Secretary, Health Department Govt. of Bihar, Patna
10. Dr. Amarkant Jha Amar, Principal (Retd.) Patna Medical College as Hospital, Patna
11. Dr. Lakhindra Prasad, Superintendent, Patna Medical College and Hospital Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Ashok Kumar Singh, Sr. Advocate
Ms. Manisha Singh
Mr S.S.Mishra

For the Respondent/s : Mr. Madhuresh Prasad, GP12
Mr Prabhat Ranjan, AC to GP 12

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 29-01-2016

Petitioner is a Medical Officer. He had earlier approached the High Court when he was sought to be transferred from his place of posting at Patna Medical College and Hospital. That writ application was registered as CWJC No.11011 of 2014. The learned Single Judge directed the Principal Secretary, Department of Health, Government of Bihar to look into the grievance of the petitioner as

also his assertions that he was primarily a Teacher and belonged to the Teaching Cadre under the Bihar Health Service, therefore, he cannot be shunted out as a Medical Officer.

2. It is the speaking order, which has now been passed by the Principal Secretary on 11.8.2014 (Annexure- 15), which is being challenged in the present writ application because the Principal Secretary has come to a categorical finding that the post of Assistant Clinical Pathologist is not a teaching post. The finding is that the petitioner belongs to the Bihar Medical Service, therefore, his transfer on administrative ground from Patna Medical College and Hospital (PMCH) to the office of Civil Surgeon, Bettiah cannot be said to be in violation of any rules, law or service conditions of the petitioner.

3. Learned senior counsel representing the petitioner started his argument on a very high note that the order of the Principal Secretary is erroneous. Petitioner has been holding the post of Assistant Clinical Pathologist at PMCH for decades and he is the only competent person, who has been imparting education to the students enrolled at PMCH and he has been treated as a Teacher all along. In fact, a look at the notification by which he was posted would indicate that he was posted on a teaching post and the notification contained in Annexure- 1, dated 29.11.1985 is a case in point. Even earlier effort was made to move the petitioner but since the petitioner cannot be

moved or posted on a non-teaching post such efforts have been aborted.

4. Learned senior counsel for the petitioner also submits that the post on which the petitioner has been transferred at Bettiah is a non- teaching post, therefore, it amounts to demotion of the petitioner. He has been offered a post not equivalent or commensurate with the post which he is holding at PMCH.

5. The core issue, therefore, which requires consideration in the present writ application is whether the transfer order of the petitioner to the Civil Surgeon's office at Bettiah violates any rules or service conditions of the petitioner? And whether the petitioner belongs to a Teaching Cadre and, therefore, he cannot be posted as a Medical Officer outside PMCH and assigned a post, which is a non-teaching post?

6. A reading of the impugned order contained in Annexure-15 by itself is a complete answer to the moot question, which has been raised at the bar on behalf of the petitioner. With due credit to the Principal Secretary, Health he has taken notice of all the objections raised by the petitioner upfront including question of discrimination. However, taking note of the rules, which relate to Senior Residents or Teachers as well as the entire service history of the petitioner including the opinion of Medical Council of India that the post of

Assistant Clinical Pathologist in a Hospital is a non-teaching post so the claim negated. In fact, the opinion, which has been extracted in paragraph 3 (ii) of the impugned order, clearly indicates that the post of Assistant Clinical Pathologist in a Hospital cannot be equated with the teaching post in a Medical College as they are separate entities.

7. To be fair to the Principal Secretary, even the question of discrimination has been fairly answered.

8. Despite the clarity in the decision making or the decision itself contained in Annexure- 15, the Court directed the State Government to answer the questions raised in the writ application because petitioner has been making all kinds of wild and loose allegations including allegation of mala fide as to why he was sought to be transferred out of PMCH.

9. To set the record straight and after having perused various materials on record, the Court has absolutely no doubt in its mind that the entire effort of the petitioner is not to give up his comfortable and cosy post at PMCH where he was posted for decades together in terms of Annexure-1. He has only created a smokescreen trying to allege mala fide as to the reason for his transfer which are imaginary in nature and those allegations for which the petitioner is trying to take credit do not relate to him and is a deliberate ploy to divert the attention of the authorities as well as the Court from the



core issue. There is adequate finding to show that the petitioner is basically a Medical Officer and, therefore, his transfer from PMCH to Bettiah on the post of a Medical Officer is commensurate with his service and the post which he is holding. He does not have a right to be posted to a 'Teaching Cadre' because he is not a Teacher. May be by virtue of his posting at PMCH on the post he was holding, he may have been utilized for the purposes of teaching, as he claims, but that by itself does not make him a Teacher as such in Clinical Pathology.

10. While the matter was heard and adjourned a couple of times on one pretext or other petitioner tried to argue as a last-ditch method that his joining was not being accepted by the Civil Surgeon, Bettiah because there is no teaching post and there is no post equivalent to what the petitioner was holding as a Assistant Clinical Pathologist at PMCH. But that was a begotten kind of letter managed by the petitioner to somehow avoid his transfer from PMCH where he had become a permanent fixture ever since his appointment in service under the State.

11. The Court directed the State Government to clarify the position on the letter of the Civil Surgeon. A letter no.1391 (2) dated 16.9.2015 issued under the signature of the Joint Secretary, Department of Health, Government of Bihar was produced by the State counsel. The State counsel pointed out to the Court that the

petitioner primarily belongs to the Bihar Health Service and, therefore, his posting as a Medical Officer under the Civil Surgeon at Bettiah was commensurate with his status and service, and the cadre to which he belongs. It can be nobody's case since there is a distinct rule and cadre in the state of Residents and Tutors.

12. The petitioner counsel has failed to successfully establish the position that his client belongs to a Teaching Cadre or was holding the post of a Teacher in PMCH and, therefore, there is no substance or legs on which the challenge to the impugned order can stand.

13. Before parting, learned senior counsel for the petitioner relies on a decision rendered by a learned Single Judge which was the case of *Vijay Kumar and others v. State of Bihar & ors., reported in 2015 (2) PLJR 625* where certain issues of transfer and promotion relating to an Associate Professor in Medicine was an issue. There, the Court in the given facts and circumstances took up the issue whether in the case of the transfer either seniority was overlooked and was done to accommodate certain persons. The counsel drew the attention to the findings in paragraphs 46 and 63.

14. This Court fails to appreciate as well as understand as to how those findings or observation of the Court in those given facts applies to the facts of the present case. The petitioner cannot create a

ghost of discrimination or the so-called issue of seniority to overcome the issue of a transfer on clinging to any kind of arguments, however, far it is from the issues and the facts involved in his case.

15. The whole edifice on which the petitioner has built the case, therefore, fails. The impugned order contained in Annexure- 15, passed by the Principal Secretary, Department of Health, Government of Bihar is cogent, valid and does not suffer from any error or vice and, therefore, does not require interference.

Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J)

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