

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4943 of 2014

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Dr. Vijay Kumar Prasad Son Of Late Ramdeo Prasad R/O- At And P.O.- Itwan,
P.S.- Haspura, District- Aurangabad. At Present, State Ayurvedic Dispensary,
Ramgarh, Chainpur, (C.H.C. Campur Chainpur), Distt.- Palamu, Jharkhand

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Director Department Of Health, Old Secretariat
Govt. Of Bihar, Patna
2. The Deputy Secretary, Deshi Chikitsa, Govt. Of Bihar, Patna
3. The Finance Commissioner, Govt. Of Bihar, Patna
4. The Civil Surgeon-Cum-Chief Medical Officer, West Champaran, (Bettiah)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Jha
For the Respondent/s : Mr. Rajesh Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-02-2016

Heard learned counsels for the parties.

A repeated assertion or claim cannot make petitioner's claim better and better every time. Petitioner had earlier approached the High Court, seeking direction for payment of salary for the period 27.04.1995 to 18.08.1995.

Looking at the time since it had elapsed since the cause of action arose and when it was sought to be raised, the Court did not pass any decisive order in favour of the petitioner. However, the Court gave liberty to the petitioner to satisfy the Principal Secretary, who will verify the correctness of such assertion of the petitioner, having worked for the period at a Primary Health Centre on the basis of so called order of transfer and pass an order.

The Principal Secretary, Health had passed order on 05.08.2013, which is Annexure – 8 to the writ application, by which it has been held that the petitioner remained absent for the period in question and, therefore, he cannot be granted salary, which is under challenge.

There is categorical finding of fact is there on the basis of the inputs, sought for and provided to the Principal Secretary that the petitioner suddenly went absent from the place of posting from 27.04.1995 and remained so till he got transferred again. The findings given by the Principal Secretary cannot be brushed aside casually, merely, on the assertion of the petitioner that there is a notification of his posting and since no departmental enquiry or a proceeding was initiated for his absence for the period in question, there cannot be any presumption of absence.

Such a submission has to be taken only on the face value. There is nothing, which has been brought on record to show the actual working of the petitioner for that period.

If the Principal Secretary has regularized that period as extraordinary leave and did not treat it as break in service, which itself would have created problems for him at the time of fixation of his pension etc., petitioner should be more than happy.

Even otherwise, this Court has serious doubts about the authenticity of such claim, looking at the time, when the cause of action arose and the time when the petitioner is trying to assert his

right in this regard. No interference is warranted with the decision.

Writ application is dismissed.

(Ajay Kumar Tripathi, J)

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