

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11073 of 2015

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Binod Kumar Mishra aged about 52 years, S/o Shri Khedra Mishra at presnet working as a Health Educator in the Primary Health Centre, Pahsara, P.S- Nawkothi, District Begusarai and Permanent Address is Village- Dahila, P.O. Parjuar, P.S Arer, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director-in-chief, Health Services, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Health Services, Munger Pramandal, Munger.
5. The District Magistrate, Begusarai.
6. The Treasury Officer, Begusarai.
7. The Civil Surgeon -cum- Chief Medical Officer, Begusarai.
8. The Additional Treasury Officer, Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv. with
Mr. Rajeev Kumar Singh, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-12-2016

Heard Mr. Rajendra Prasad Singh, learned senior counsel appearing for the petitioner and Mr. Prabhat Kumar Verma, learned Additional Advocate General No.3 for the State.

This writ petition has been filed praying for quashing of the order dated 6.11.2013 passed by the Civil Surgeon –cum- Chief Medical Officer, Begusarai, whereby the petitioner has been dismissed from service. A copy of the order is impugned at Annexure-1 to the writ petition.

Facts of the case briefly stated is that the petitioner was



appointed as a Health Educator at Primary Health Centre, Lokaha in the district of Madhubani vide Memo No.2326 dated 26.9.1989, a copy of which is placed at Annexure-2. Vide order bearing Memo No.2628 dated 27.11.1989 of the Civil Surgeon –cum- Chief Medical Officer, Madhubani the petitioner was posted at Additional Primary Health Centre, Osi (Bisfi) in the district of Madhubani. The petitioner applied for transfer to Begusarai vide Annexure-4 on 20.7.1990 which was accepted and under the orders of the Regional Deputy Director, Health Services, Darbhanga Division, Darbhanga bearing Memo No.481 dated 26.7.1990 the petitioner was posted under the Civil Surgeon –cum- Chief Medical Officer, Begusarai. A copy of the order is enclosed at Annexure-5. While the petitioner was continuing on his post at Begusarai under the Civil Surgeon –cum- Chief Medical Officer, Begusarai that an FIR was instituted giving rise to Nawkothi P.S. Case No.3 of 1999 registered for the offences punishable under sections 467, 468, 471 and 420 of the Indian Penal Code. The allegation against the petitioner is that his appointment was forged and fabricated because the post of Health Educator was supervisory cadre post and the Civil Surgeon –cum- Chief Medical Officer had no jurisdiction to make such appointment. After investigation into the allegation the police submitted final form on 31.7.1999 present at Annexure-12 series



and which has been accepted by the learned Chief Judicial Magistrate, Begusarai vide order passed on 7.3.2009, a copy of which is present at running page 46 of the proceeding. According to the petitioner, the dispute raised having been put to rest, all arrears towards salary and other dues were paid to the petitioner.

On the other hand, an enquiry was initiated into the appointment of the petitioner at the instance of the District Magistrate, Begusarai, who vide letter dated 3.7.2013 directed the petitioner to furnish all papers relating to his appointment. The letter of the District Magistrate, Begusarai clearly indicates that there was no paper available to confirm his appointment. A show cause notice was also issued by the Civil Surgeon –cum- Chief Medical Officer, Begusarai to the petitioner and two others on 20.7.2013, a copy of which is present at Annexure-19. The petitioner replied to the show cause on 16.8.2013 vide Annexure-20. The District Magistrate along side also issued a notice to the petitioner on 14.9.2013 vide Annexure-21 seeking explanation from the petitioner on his appointment. The petitioner replied to the District Magistrate vide Annexure-22 but was faced with another show cause dated 3.10.2013 present at Annexure-23 requiring the petitioner to explain his appointment since the appointment letter referred to by the petitioner bearing Memo No.2326 dated



26.9.1989 is in context with a drug licence and not in connection with any appointment. The petitioner submitted his reply through registered post vide Annexure-24. The petitioner at the same time also moved this Court in CWJC No.21944 of 2013 but the writ petition was dismissed vide order present at Annexure-26 dated 5.12.2014 requiring the petitioner to respond to the notice. In the meantime the impugned order dated 6.11.2013 has been passed by the Civil Surgeon –cum- Chief Medical Officer whereby the services of the petitioner has been dismissed.

It is rather surprising that even though the dismissal order impugned herein was passed on 6.11.2013 and though the writ petition was dismissed on 5.12.2014 but the petitioner did not choose to question the order in the said proceedings.

Be that as it may the petitioner is before this Court questioning the order of termination dated 6.11.2013 impugned at Annexure-1 to the writ petition.

It is the argument of Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner that whatsoever was the cloud on the appointment of the petitioner has been set at rest by the submission of the final form by the investigating agency vide Annexure-12 series and which has not been questioned by the prosecution before any superior forum. It is



also the argument of Mr. Singh that the order of termination is in violation of principles of natural justice inasmuch as no opportunity of hearing was provided to the petitioner by the Civil Surgeon - cum- Chief Medical Officer. It is further the argument of Mr. Singh that the termination order is resting on the foundation that the order present at Annexure-2 bears a memo which in fact is the number of a memo relating to correspondence made in connection with a drug licence. It is submitted that a mere typographical error in the number of the memo, would not be sufficient to term it as a forged document until such time it is proved as such. It is also the argument of Mr. Singh that although vide show cause notice dated 20.7.2013 present at Annexure-19, three persons had been proceeded against including the petitioner but while the proceedings had been dropped against the others, it is the petitioner who has been singled out for termination. Learned counsel has referred to a Supreme Court judgment reported in **2001 (3) PLJR (SC) 187 (Subodh Kumar Prasad Vs. State of Bihar)** to submit that a similar issue was raised before the Supreme Court where the appointment was terminated on grounds that it was fake since the dispatch register showed that the number mentioned in the appointment order in fact was not a letter of appointment and the Supreme Court held that a mere discrepancy in the number would



not be sufficient to hold the appointment fake until such time it was concluded as such in an enquiry. He submits that no such enquiry has taken place rather a criminal proceeding initiated in this regard exonerates the petitioner of all the charges.

The argument of Mr. Singh has been contested by Mr. Prabhat Kumar Verma, learned Additional Advocate General No.3 and who contends that the impugned action has been taken after due notice to the petitioner. With reference to a letter of the District Magistrate, Begusarai he submits that it is after due notice to the petitioner and on being satisfied that the appointment of the petitioner was resting on a forged document that the District Magistrate, Begusarai advised the Civil Surgeon –cum- Chief Medical Officer, Begusarai to take appropriate steps in the matter including institution of a police case. He submits that it is following the directions of the District Magistrate present at Annexure ‘E’ to the counter affidavit of the respondent no.7 that the order impugned has been passed by the Civil Surgeon –cum- Chief Medical Officer, Begusarai. Learned counsel has also referred to a State Government circular dated 20.1.1992 enclosed at Annexure ‘H’ of the counter affidavit of respondent no.5 to submit that it is the Director-in-Chief, Health Services who is the appointing authority of a Health Instructor/Educator and not the Civil Surgeon –cum- Chief Medical



Officer. According to Mr. Verma, there is no infirmity in the termination order because neither the Civil Surgeon –cum- Chief Medical Officer had the jurisdiction to make appointment nor the memo number which accompanies the appointment of petitioner at Annexure-2 was found to be valid rather the memo related to correspondence in connection with drug licence. Learned counsel has referred to a judgment of the Supreme Court since reported in **(2005)7 SCC 690 (Bank of India Vs. Avinash D. Mandivikar)** to submit that where an appointment is obtained by committing fraud, a mere continuance in service would not be sufficient to uphold the appointment. According to Mr. Verma, an act of fraud vitiates all rights including a necessity to hold a formal disciplinary proceeding.

I have heard learned counsel for the parties and I have perused the records.

In the nature of the dispute that accompanies this writ petition, I do not intend to express any opinion on the merits of the rival claim at the present juncture. Some undisputed facts which does accompany the writ petition are that the petitioner was appointed in the year 1989 and has continued uninterruptedly for almost 24 years. It is also undisputed that a criminal case initiated against the petitioner on the same charges, has been dropped. It is



again not in dispute that the department has not chosen to question the acceptance of the final form before any superior forum. It is again not disputed that although the District Magistrate initiated correspondence with the petitioner on his appointment but left it midway to shoulder it on to the Civil Surgeon –cum- Chief Medical Officer. Last but not the least is that even though the Civil Surgeon –cum- Chief Medical Officer, Begusarai has proceeded to terminate the appointment of the petitioner but no show cause was issued much less an opportunity of hearing.

The allegation against the petitioner is that his appointment letter is forged. Although an allegation of forgery is a criminal act but the prosecution has failed to drive home the charges in the criminal case so instituted against the petitioner. The allegation which has been put up against the petitioner is that the memo number in his appointment –cum- posting order enclosed at Annexure-2 in fact relates to another letter issued in connection with a drug licence. Now the moment two letters come to notice bearing same memo number, which may be unintended typographical error or even a case of intentional fraud being committed but then the issue requires a deliberation in a duly constituted proceeding and cannot be adjudicated in a summary manner as having been done in the present case.



Another issue which crops up in the matter is whether the Civil Surgeon –cum- Chief Medical Officer, Madhubani had jurisdiction to order for absorption of the retrenched employee against the post of Health Educator. This again could not have been sorted out in a summary proceeding. The situation gets even worse in the matter because the District Magistrate having initiated a correspondence with the petitioner, has not concluded on the issue and the Civil Surgeon –cum- Chief Medical Officer while passing the impugned order of termination has not bothered to hold any proceedings.

The argument of Mr. Verma is very sound on principles but the fact remains that fraud is an issue of fact to be concluded in a duly constituted proceeding and cannot be upheld on mere allegation.

The judgment rendered by the Supreme Court in the case of **Subodh Kumar Prasad** (supra) has travelled the distance from this Court itself having been dismissed by the Single Bench as well as the Division Bench. The identical nature of dispute(s) can be gathered from the opinion recorded at paragraphs 4 to 6 of the judgment which reads as under:

“4. Ultimately an order was made by the Chief Medical Officer stating that the appointment letter of the appellant which has been shown vide Memorandum No.2681 dated 12.11.1982 is a letter of



the office which is not in regard to the appointment of anyone. On that basis his services were terminated. He filed a writ petition before the High Court.

5. The learned Single Judge by an order made on 3.9.1998 dismissed the same. It appears that certain records were produced before the Court and when the stand had been taken by the appellant that the letter of appointment was not forged, on seeing the issue register in question the learned Single Judge felt satisfied that it could not be the letter of appointment. This view however, stood affirmed by the Division Bench. Hence this appeal before us.

6. What should have been really examined in the case is the letter of appointment itself and not the mere registers which indicate dispatch of letters. If the letter of appointment issued to the appellant was a fake one there was certainly a cause for disciplinary action, but not by merely looking to the register such conclusion could be inferred for numbers noted therein may have been as a result of mistake. Therefore, the inquiry should have been as to the actual nature of the order or the letter of appointment issued to the appellant. That inquiry was not done by the learned Single Judge.”

In this connection I am also reminded of another judgment of the Supreme Court since reported in **AIR 2016 SC 3598 (Avtar Singh Vs. Union of India)** where a dismissal had taken place without any enquiry, inter alia, on grounds that the appointment rested on false information entered in the verification form. The Supreme Court has summarized its conclusion at paragraph 30(9) to hold that if an employee is a confirmed employee, holding of a departmental enquiry would be necessary before an order of termination.

Besides the shortcomings in the proceedings noted



above, an additional feature would be that if the appointing authority of a Health Educator is the Director-in-Chief, Health Services then the termination order certainly could not have been passed by the Civil Surgeon –cum- Chief Medical Officer which is an order without jurisdiction.

For the reasons and discussions held above, the order of termination dated 6.11.2013 passed by the Civil Surgeon –cum- Chief Medical Officer, Begusarai impugned at Annexure-1 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed. The petitioner stands reinstated with 50% arrears of salary.

This order, however, would not preclude the authorities concerned to proceed afresh against the petitioner but in accordance with law.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23-12-2016
Transmission Date	NA

