

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No 5336 of 2013

IN

Civil Writ Jurisdiction Case No 3919 of 2013

- =====
1. Vimal Prakash S/O Late Umesh Narayan Verma R/O Mohalla Mitra Mandal Colony, B/24, P.S. Anisabd, District Patna.
 2. Ram Kumar Gupta S/O Jagnarayan Gupta R/O Village Jith Kahiya, Mai Sthan M.I.T., P.S. Brahampura, District Muzaffarpur.
 3. Sadhana Singh W/O Ravi Shankar Prasad Singh H/No. A/13, Behind - Patliputra School, Beur, Jail Road, Anishabad, Patna.
 4. Ashish Ranjan Akhilesh S/O Late Jitendra Kumar Verma Village + Post Tiwari Toka, Shanti Nagar, Ward No. 32, District Saharsa.
 5. Vijay Kumar S/O Shri Durga Sah Gram + Post Bhatauni, Bhaya - Simti Bakhtiyarpur, District Saharsa.
 6. Krishna Kumar S/O Shri Kapil Deo Sharma Gram + Post Badhauna, Bhaya Kharagpur, District Munger.
 7. Shamim Akhtar S/O Iliyas Ansari Village + Post Sarta, P.S. Rahika, District Madhubani.
 8. Atul Ranjan S/O Shri Umesh Goit R/O Village Parsahi Laukta, P.S. Khutauta, District Madhubani.
 9. Ajay Kumar S/O Naval Kishore Verma R/O Mohalla Nand Gaon, P.S. Shastri Nagar, District Patna.
 10. Savita Kumari D/O Ramdeo Das R/O Mohalla Bhasani Tola, P.S. Mal Salami, District Patna.
 11. Meena Kumari C/O Professor Bikram Narayan Singh R/O Mohalla Krishna Puri, P.S. Sheikharpur, New Zeromile, District Muzaffarpur.
 12. Anil Kumar S/O Baidhnath Singh R/O Mohalla Sultanpur, Koiri Tola, House No. 327, Ward No. 17, Danapur.
 13. Amrendra Kumar S/O Bindeshwari Sah P.O. Panchvir Market, District Begusarai.
 14. Kamakhya Narayan Shukla S/O Shri Rajendra Prasad Shukla Village Baksara, P.S. Katmahar, District Rohtas.
 15. Archana Prabhakar W/O Rudra Murti R/O Vijay Nagar, Road No. 07, Rukunpura, Patna.
 16. Rita Kumari W/O Saroj Kumar Village + Post Bhaudiha, P.S. Nokha, District Rohtas, At Present Address C/O Sanchita Nand Prasad Cid Inspector Lalg Tola, Patna-1.
 17. Dilip Kumar S/O Ram Narayan Das Village Pakki Sarai, P.O. + P.S. Ghogha, District Bhagalpur.
 18. Braj Mohan S/O Shri Bhugeshwar Jha Village + Post Liladh, Bhaya Ghoghadiha, District Madhubani.
 19. Aparna W/O Dr. Aditya Ranjan R/O Mohalla Bajar Samiti (Rampur) Patna, D/O Late Shri Krishna Sharma, Motihari, Station Road, Motihari (East Champaran).

.... Petitioner/s

Versus

1. The State Of Bihar Through Sri Deepak Kumar, Principal Secretary Health Department, Government Of Bihar, Patna.
2. Sri Sanjeev Kumar Sinha, The Project Director, Bihar State AIDS Control Society (Health Department, Government Of Bihar) Sheikhpura, Patna.

3. Dr. Abhay Prasad, Additional Project Director Who Is Also Presently Looking After The Work Of Deputy Director (VCTC) Bihar State AIDS Control Society (Health Department, Government Of Bihar) Sheikhpura, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr Manan Kumar Mishra, Sr Advocate with
M/s Vishwajeet Kr Mishra & Ashutosh Tripathy, Advs

For the State : Mr Amit Bhushan, AC to GP 17

For the Society : M/s Satya Prakash Tripathy & Satya Vrat, Advs

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 28-09-2016

We have perused the show cause replies and heard the learned counsel for the parties. Hopefully, this is the end of all unwanted controversies.

2 The petitioners were recruited as Counsellors –cum Lab Technicians by the Bihar State AIDS Control Samiti (for brevity, *the Samiti*) on the directions of the National AIDS Control Organization (for brevity, *the Organization*). Their appointment was purely contractual. Upon selection, they were sent for specialized training. They were all appointed in and around 2003 to 2007. Controversies started when, for some unknown reason, Samiti decided to recruit the fresh Counsellors –cum- Lab Technicians again on contractual basis, to replace the petitioners. Writ petition was filed



and the learned Single Judge gave judgment in favour of the writ petitioners clearly holding that one set of contractual appointees cannot be replaced by another set of contractual appointees. State, being aggrieved, preferred an unsuccessful intra-Court appeal. The Division Bench also held that one set of contractual employees could not be replaced by another set. The effect and the meaning of these orders were clear. Petitioners would continue and fresh appointment, if any, could only be made to fill any vacancy or any further recruitment. Notwithstanding the aforesaid, when petitioner's contracts were not being renewed, they were not being paid and efforts were being made to dislodge them virtually in defiance of orders of the Single Judge, as affirmed by the Division Bench, this contempt proceeding was initiated. The learned Single Judge, before whom these proceedings were initiated, rightly held that as the order of the learned Single Judge has merged in the appellate order, the contempt proceeding shall be initiated by the Division Bench. After hearing, we have noted facts and controversies in our detailed order dated 27.07.2016 passed in these proceedings. It appears, pursuant to our order, Shri Manan Kumar Mishra, learned Senior Counsel submits that now the petitioners and their like are not being dislodged nor are being sought to be replaced by fresh contractual appointees. Thus, they are secured. It may be noted, at one time a controversy was



raised that the petitioners did not seek renewal of their contract. This Court noted and rejected the plea and directed that in any case, all renewals have to be accepted. Apparently, this has been done. The renewals, having been made now, there is no threat of them being ousted.

3 Now, a new problem has arisen. As noted in our earlier order, all the persons were recruited for a particular place but in course of time, they were transferred to different locations as per work arrangement. They, thus, continued to work in the new places, some for over 10 years. They are paid wages virtually of a Class IV employee. They have now settled in such places. Some of them, when a plea was taken that they have to go back for renewal, brought to our notice the decision of the Central Government that their appointments were not transferable. The question is what happened to this, when State authorities themselves moved them to other stations and retained them there for years thereafter. The explanation given is that they were not transferred but they were merely deputed to another place. Whether they were transferred or deputed, their place of work was shifted. Being virtually Class IV employees, though Lab Technicians, they have settled at different places. To us, it seems, it would be highly iniquitous now to ask all of them to come back to their initial place of posting.

4 In such a situation, in respect of those persons, who were “deputed” out of their original place of appointment, if they wish to continue there, they should not be disturbed. Fresh appointees can be adjusted at other places, if there is vacancy. It will not be in interest of these persons, the writ petitioners, who are so little paid and who have made arrangements for a long time living at a particular place, knowing the locality, which is only helpful for their work, to be moved out. We are sure that the State would not create any further hindrance and will act accordingly.

5 With these observations and directions, this application stands disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

U			
---	--	--	--