

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6081 of 2013

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Braj Nandan Roy Son of Late Rameshwar Prasad Roy Resident of Nav Vikash Lane, P.S. Aashina Nagar, Town And District – Patna. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna
 2. Director in Chief, Health Services, Bihar, Patna
 3. Chief Malaria Officer, Bihar, Patna
 4. Regional Deputy Director, Health Services, Koshi Division, Saharsa
 5. District Malaria Officer, Patna
 6. Civil Surgeon cum Chief Medical Officer, Patna
 7. Incharge Medical Officer, Primary Health Centre, Phulwarisharif, Patna
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Banwari Sharma,
Mr. Shiv Kumar and
Mr. Sahjanand Sharma
For the Respondent/s : Mr. Rajesh Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-03-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner has claimed the arrears of salary for the period from August 2002 to 2010.

It appears from the record that the petitioner was working as a Basic Health Worker on regular basis from 19/03/1987 and later on, vide order dated 4.3.2003, his service was terminated on the ground of illegal entry in the service as he was not appointed by the competent authority. Against the order of termination, the petitioner approached this Court in CWJC No. 473 of 2003 and made a prayer for quashing the letter no 1401 dated 16/11/2002 which was

issued under the signature of Chief Malaria Officer, Bihar, Patna whereby and whereunder the petitioners was terminated.

After filing of that writ application, again letter no. 1842 dated 4.3.2003 was issued by the Civil Surgeon-cum-Chief Medical Officer, Patna which was again challenged in CWJC No. 4154 of 2003 and both the cases were heard together along with the other writ petitions which were allowed vide order dated 8/9/2003, directed for reinstatement of writ petitioners including the present petitioner.

The State was not satisfied with the aforesaid order, approached the Division Bench of this Court in LPA No. 282 of 2004 along with the other cases, directed to constitute a Three-Men Committee to enquire into the legality of the appointment of the petitioner and others in terms of the judgment reported in (2006) 4 SCC 1 (Secretary, State of Karnataka and others vs. Umadevi [3] and others). The Committee submitted its report where found that the appointment of the petitioner was illegal as the petitioner was not appointed by a competent person.

As per the petitioner, that report was given without hearing the petitioner. That order was challenged before this Court in CWJC No. 6422 of 2009 and this Court, vide order dated 20/05/2009, allowed the writ petition and passed the order of reinstatement without entertaining the claim of arrear of salary.

When the petitioner was not reinstated, he filed a contempt Petition No. 3401 of 2009 and after much struggle, he was reinstated in service.

In the present case, only limited grievance has been raised that the petitioner has been deprived of arrears of salary for the period from 2002 to 2010 including the annual increment which he is entitled to.

From the aforesaid order it appears that the petitioner was reinstated without giving any benefit of arrears of salary. When the Writ Court has not granted the benefit of arrears of salary and set aside the order of termination, it will not be proper for this Court to give a direction for the arrears of the salary to the petitioner.

In such view of the matter, this Court does not find any merit in the present case. Accordingly, this petition is dismissed.

The Government will ensure that the payment would be made to the petitioner from the order of the reinstatement passed by the Writ Court. With regard to other benefits i.e. increment, the petitioner if so advised, may file a representation before the appropriate authority. If such representation is filed, the authority will pass the order in accordance with law.

(Shivaji Pandey, J)

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