

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11469 of 2016

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Babu Sarvajeet Akela, son of Sri Devendra Nath Akela, resident of Village-
Pararia, P.S- Magadh Vishwvidyalaya, Bodh Gaya, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health
Government of Bihar, Patna.
2. The Director -in- Chief (Administration), Health Services, Bihar, Patna.
3. State Health Society through its Executive Director, Pariwar Kalyan Bhawan,
Sheikhpura, Patna.
4. District Magistrate -cum- Chairman, District Health Society, Patna.
5. Civil Surgeon -cum- Member Secretary, District Health Society, Patna.
6. Deputy Superintendent, Sub-divisional Hospital, Barh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate
Mr. Shiv Kumar, Advocate

For the Respondent-State : Mr. Ajay Bihari Sinha, GA-8
Mr. Suryakant Kr, AC to GA-8

For the Respondent-Society: Mr. Kishore Kr. Sinha, Advocate
Mr. Shashi Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-09-2016

Heard Mr. Banwari Sharma, learned counsel appearing for
the petitioner, Mr. Suryakant Kumar, learned Assisting Counsel to
Government Advocate No.8 for the State and Mr. Kishore Kumar Sinha,
learned counsel appearing for the State Health Society.

The petitioner is aggrieved by the order dated 13.1.2014 of
the Civil Surgeon -cum- Member Secretary, District Health Society,
Patna impugned at Annexure-5, whereby the contract of the petitioner
has been terminated and which order of the Civil Surgeon -cum-
Member Secretary stands affirmed by the order of the Executive Director
dated 16.6.2014 impugned at Annexure-8 as well as by the Principal

Secretary in the order dated 30.8.2016 placed on record vide Annexure- 'C' to the supplementary counter affidavit filed on behalf of the State Health Society today.

The contract in question was for a fixed period as manifest from the agreement present at Annexure 'A' to the counter affidavit filed on behalf of the Society and was valid until 31.8.2013. Despite the position, the petitioner was allowed to continue even thereafter until the passing of the order impugned on 13.1.2014 as affirmed by the appellate authority. Apparently as until the tenure of the engagement i.e. from 1.9.2010 to 31.8.2013 the petitioner was not proceeded against for any default rather first of such notice was issued on 13.1.2014 in terms of Clause 10(f) of the agreement listing certain acts of negligence by the petitioner in management of the hospital in question. The petitioner appealed against the said termination notice to the Executive Director vide Annexure-7 responding to the allegations and which has been rejected by the Executive Director vide order passed on 16.6.2014 and affirmed by the Principal Secretary on 30.8.2016, not finding the answers satisfactory enough to meet the allegations.

The short argument which has been advanced by Mr. Sharma is, that although the Executive Director has taken notice of the response made by the petitioner as to the reasons why there was shortage of medicines supply as well as on other issue but without dealing with the same, his prayer has been rejected and which order has been mechanically affirmed by the Principal Secretary.

Perhaps Mr. Sharma is correct because the order passed by the Executive Director is not a speaking order and no reasons have been assigned by the Executive Director to reject the explanation given by the petitioner. The same goes for the order passed by the second appellate authority who has merely endorsed the opinion of the Executive Director. The situation is that the petitioner having responded to the allegations, none of the appellate authorities have discussed the replies nor have assigned reasons for its rejection.

In normal circumstances, I would have remitted the matter for fresh consideration by the authority concerned but considering that the professional service contract of the petitioner was valid only until 31.8.2013 and which period has expired more than three years back, instead of remitting the matter, I, deem it fit and proper to dispose of the writ petition with a direction to the authority concerned to consider the candidature of the petitioner on its own merit in case they would be going for a fresh advertisement in the matter without being prejudiced by the termination order impugned herein.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-09-2016
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