

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13842 of 2011

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Kamleshwari Pd. Yadav S/O Late Jagan Pd. Yadav, resident of Mohalla -
Gangjala, Ward No.-17, Saharsa, P.S. + Distt.-Saharsa. Petitioner
Versus

1. The State of Bihar.
 2. The Director in Chief, Health Services, Govt. of Bihar, Patna.
 3. The Deputy Director (Headquarter), Health Services-Cum-Leprosy
Controlling Authority, State Leprosy Office, Bihar, Patna.
 4. The Civil Surgeon-Cum-Chief Medical Officer, Saharsa.
 5. The Additional Chief Medical Officer, Saharsa.
 6. The District Leprosy Officer, Saharsa. Respondents
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Appearance :

For the Petitioner/s : Mr. Chandra Bhushan Das
For the Respondent/s : Mr. AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 05-04-2016 Heard Sri Chandra Bhushan Das, learned counsel for
the petitioner and learned AC to AAG-3.

The petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has made a prayer for quashing of letter, contained in Memo No.368 dated 20.12.2010 issued under the signature of Respondent no.3/ the Deputy Director(Headquarters), Health Services-cum-Leprosy Controlling Authority, State Leprosy Office, Bihar, Patna (Annexure-5 to the writ petition), whereby Respondent no.3 by way of making partial amendment in the order, contained in Memo no.272 dated 06.09.2010, had taken away one benefit of A.C.P. Scheme of the petitioner.

It is case of the petitioner that he was initially



appointed as Lower Division Clerk in the office of the Regional Dy. Director, Health Services, Patna. Subsequently, an advertisement was issued inviting application from the eligible candidates for the post of Non-Medical Assistant vide Annexure-1 to the writ petition. Pursuant to the advertisement, the petitioner applied and finally selected for the post of Non-Medical Assistant and, thereafter, he was appointed and joined the post as Non-Medical Assistant on 17.06.1977 under the Medical Officer, Leprosy Control Units, Saharsa. It is specific case that continuing as Non-Medical Assistant, he finally superannuated with effect from 31.08.2008. During his entire tenure, after completion of about 29 years of service as Non-Medical Assistant, for the first time in the year 2006, he was provided only one A.C.P. Thereafter, the petitioner filed number of representations before the authority concerned. Enjoying the benefit of one A.C.P. the petitioner superannuated in the year 2008 itself.

It was submitted by learned counsel for the petitioner that even after superannuation the petitioner filed representation and finally considering the fact that even after completion of about 31 years of service as Non-Medical Assistant, the petitioner was granted only one A.C.P. Finally, vide order contained in Annexure-4 to the writ petition, i.e. order contained in Memo



No.273 dated 06.09.2010 issued by Respondent no.3, the petitioner along with others were granted actual benefit under the Scheme of A.C.P. The petitioner was shown granted two A.C.Ps on completion of 24 years. However, the petitioner, subsequently was surprised to know that the order contained in Annexure-4 was modified and one A.C.P. was withdrawn, which was decided to be given to the petitioner.

Aggrieved with the action of the Respondents, the petitioner filed a representation before the Director-in-Chief, Health Services. Since on his representation, the Respondents had not taken any notice, the petitioner was constrained to file the present writ petition.

Learned counsel for the petitioner submits that the post of Lower Division Clerk and Non-Medical Assistant are of two cadres. There is no provision for promotion of clerk to the post of Non-Medical Assistant and this was the reason that the post of Non-Medical Assistant was advertised earlier and the petitioner after applying and being qualified was selected as Non-Medical Assistant in the year 1977 and he continued in the same capacity till the date of his superannuation. However, during his service period, he was granted only Junior Selection Grade Promotion in the year 1982. The said benefit was not hurdle, while considering

grant of A.C.P. and, as such, according to learned counsel for the petitioner, Respondent no.3 has incorrectly taken away the benefit of one A.C.P from the petitioner and the impugned order is liable to be set aside.

Learned AC to AAG-3 has vehemently opposed the prayer of the petitioner. It was submitted by her that in the Service Book itself, the petitioner was shown appointed initially as Lower Division Clerk and there is endorsement to show that he was given promotion as Non-Medical Assistant. It has further been argued that while issuing Annexure-4 to the writ petition, there was a specific averment that in case of detection of error, same can be removed and the benefit can be withdrawn even without notice to the concerned persons and, as such, in terms of provision, mentioned in Annexure-4 to the writ petition, only error of Annexure-4 has been removed by way of issuance of Annexure-5, which has been challenged in the present petition.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The averment made in the writ petition regarding appointment of the petitioner as Non-Medical Assistant pursuant to advertisement has not been disputed in categorical manner. Meaning thereby that from the post of Lower Division Clerk, the petitioner was not made Non-Medical

Assistant on the basis of promotion, rather it was a case of selection on the basis of advertisement.

Fact remains that the petitioner was functioning as Non-Medical Assistant from his date of appointment i.e. 17.06.1977. Even for the first time i.e. in the year 2006, while the petitioner along with others were granted the benefit of A.C.P., the petitioner was treated as Non-Medical Assistant, which is evident from page-11 of the writ petition i.e. part of Annexure-3 to the writ petition. The Court is satisfied that the petitioner had continued as Non-Medical Assistant and completed period to obtain two A.C.Ps. Accordingly, the Court is of the opinion that Respondent no.3 has incorrectly modified Annexure-4 to the writ petition to the extent of taking away the benefit of one A.C.P. from the petitioner.

Accordingly, the writ petition is allowed and Annexure-5 to the extent of concerned petitioner is hereby set aside and order of Annexure-4 is restored with further direction to the Respondents to grant all consequential benefits to the petitioner, which must be completed within three months from the date of receipt/production of a copy of this order.

NKS/-

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(Rakesh Kumar, J)