

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.565 of 2016
IN
Civil Writ Jurisdiction Case No. 7459 of 2015**

Dr. Lakshmi Narayan Singh, son of late Indra Deo Singh, resident of village- Patar, P.S.- Ashwan, District- Siwan, at present residing at- 104, Santosha Complex, Bandar Bagicha, Fraser Road, Patna.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director-in-Chief, Health Services, Government of Bihar, Patna.
3. The Director, Health Services, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Health, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
6. The Principal, Patna Medical College & Hospital, Patna.
7. The Superintendent, Patna Medical College & Hospital, Patna.
8. The Civil Surgeon, Bihar, Patna.
9. Deepak Kumar, son of not known to the petitioner, the then Principal Secretary, Health Department, Government of Bihar, Patna.
10. Dr. Amarkant Jha Amar, Principal (Retd.), Patna Medical College and Hospital, Patna.
11. Dr. Lakhindra Prasad, Superintendent, Patna Medical College and Hospital, Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Sr. Advocate with
Mr. Shitanshu Shekhar Mishra, Advocate
For the Respondent/s : Mr. Harish Kumar, GP 8
Mr. Vikash Kumar Pankaj, AC to GP 8

**CORAM: HONOURABLE THE CHIEF JUSTICE
&
HONOURABLE DR. JUSTICE RAVI RANJAN**

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-10-2016

Aggrieved by his transfer from the post of
Assistant Clinical Pathologist, Patna Medical College and Hospital
(in short "PMCH"), to the Civil Surgeon's Office, Bettiah, the



appellant-petitioner, who is a member of Bihar Health Service, approached this Court with a writ petition, made under Article 226 of the Constitution of India, giving rise to CWJC No.11011 of 2014. The said writ petition was disposed of with direction to the Principal Secretary, Department of Health, Government of Bihar, to look into the grievance of the appellant-petitioner, especially, the petitioner's assertion that he was primarily a Teacher and belonged to the Teaching Cadre under the Bihar Health Service and, therefore, he cannot be shunted out as a Medical Officer to the office of the Civil Surgeon, Bettiah.

2. By a speaking order, dated 11.08.2014, the Principal Secretary, Department of Health, Government of Bihar, came to a categorical finding that the post of Assistant Clinical Pathologist is not a teaching post. It is the finding of the Principal Secretary, Department of Health, Government of Bihar, that the appellant-petitioner belongs to Bihar Medical Service and, therefore, his transfer, on administrative ground, from PMCH to the Office of the Civil Surgeon, Bettiah, cannot be said to be in violation of any rules, law or service conditions.

3. Aggrieved with the findings, so arrived at by the Principal Secretary, Department of Health, Government of Bihar, the petitioner came, once again, to this Court with writ petition, made under Article 226 of the Constitution of India,

giving rise to CWJC No.7459 of 2015. The later writ petition, too, has been dismissed by judgment, dated 29.01.2016, passed by a learned single Judge of this Court.

4. Aggrieved by dismissal of his writ petition, this appeal has been preferred.

5. We have heard Mr. Ashok Kumar Singh, learned Senior Counsel, appearing on behalf of the petitioner, and Mr. Harish Kumar, GP 8, appearing on behalf of the State-respondents.

6. The submission, made on behalf of the appellant-petitioner, is that the appellant-petitioner has been holding the post of Assistant Clinical Pathologist, at PMCH, for decades and has been imparting education to the students enrolled at PMCH and since he has been working as a Teacher all along, he cannot be transferred from PMCH to the Office of the Civil Surgeon, Bettiah.

7. The learned single Judge, in the judgment under appeal, dated 29.01.2016, correctly opined that the core issue is; Whether the transfer order of the petitioner to the Civil Surgeon's office at Bettiah violates any rules or service conditions of the petitioner? And whether the petitioner belongs to a Teaching Cadre and, therefore, he cannot be posted as a Medical Officer outside PMCH and assigned a post, which is a non-teaching post?



8. In the judgment under appeal, the learned single Judge has pointed out that the Principal Secretary, Department of Health, Government of Bihar, has taken note of the relevant rules as well as the entire service history of the appellant-petitioner including the opinion of the Medical Council of India, rendered to the effect, that the post of Assistant Clinical Pathologist, in a hospital, is a non-teaching post and, on this basis, the claim of the appellant-petitioner has been negated.

9. We agree with the findings of the learned single Judge, so reached, and see no reason to differ inasmuch as nothing could be placed before us, on behalf of the appellant-petitioner, to show that he was a member of Teaching Cadre in the PMCH. On the contrary, he was appointed as a member of the Bihar Medical Service and could have, therefore, been posted out to the office of the Civil Surgeon, Bettiah.

10. It has, however, been further submitted, on behalf of the appellant-petitioner, that the post to which he has been transferred is a post inferior to the post, which he has been holding. In this regard, too, nothing could be placed, on behalf of the appellant-petitioner, to show that the post to which he has been transferred is a post, which is inferior to the post, which the appellant-petitioner had been holding, and/or that the appellant-petitioner's positing, at the office of the Civil Surgeon, Bettiah, is

his demotion in service.

11. The appellant-petitioner has also not been able to show that he has been discriminated or has been unfairly dealt with and/or that his order of transfer is *malafide* and *bias* or against any rules.

12. Because of what have been discussed and pointed out above, we find no infirmity in the finding of the Principal Secretary, Department of Health, Government of Bihar, nor could we find any infirmity, legal or factual, in the conclusion reached, and the decision arrived at, by the learned single Judge, while considering the writ petition.

13. Situated thus, the appeal is not admitted and shall, accordingly, stand dismissed.

14. No order as to costs.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J: I agree

(Dr. Ravi Ranjan, J)

J.Alam/-

AFR/NAFR	NAFR
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