

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1826 of 2012

IN

Civil Writ Jurisdiction Case No. 13158 of 2009

=====

1. Rakesh Kumar Neeraj S/O Shambhu Nath Khan Resident Of Near Krishnaghat,
At- Bengaon, P.O & Distt- Bangaon, Distt- Saharsa.

.... Appellant/s

Versus

1. The State Of Bihar Through Health Secretary To Chairman, N.R.H.M. New
Secretariat, Patna.
2. The Civil Surgeon, Member Secretary To N.R.H.M. And B.S.S. Madhepura.
3. The D.D.C. Deputy Chairman, D.H.S. N.R.H.M. Madhepura.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Ranjan Kumar Jha, Advocate

For the State : Mr. Rajiv Roy GP5 & M.Ambust,AC to GP5

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-03-2016

The present intra-Court appeal has been filed against a part of the order, being order dated 7-5-2012 passed in C.W.J.C.No. 13158 of 2009.

2. We have heard learned counsel for the writ petitioner-appellant as well as learned counsel for the State, and with their consent this appeal is being disposed of at this stage itself.

3. It appears that the writ petitioner-appellant was recruited as District Programme Manager, by the District Health Society, purely on contractual basis. The appointment letter of the petitioner is contained in Memo dated 6-12-08(Annexure-11 to the 2nd supplementary affidavit) and the contract is Annexure-7 to the supplementary affidavit). He was visited with a letter dated 24-7-2009



issued by the Civil Surgeon, Madhepura, terminating his contract. It is that, which was challenged before a learned Single Judge , inter alia, on the ground that the cancellation was unilateral exercise without any notice to the petitioner-appellant, and it being stigmatic in nature. It was invalid, as the petitioner-appellant had not been granted any opportunity to defend himself. The learned Single Judge on this count allowed the writ petition and set aside the order of cancellation of the contract, but when it came to consequential relief, the learned Single Judge noticed that the contract was only valid up to November 2009. Accordingly, instead of ordering reinstatement or granting any other relief, the learned Single Judge merely ordered that as the contract was valid only for three months more from the date of its cancellation, the petitioner-appellant would only be entitled to three months' remuneration and would not be required to be reinstated. It is this latter part with which the writ petitioner-appellant is aggrieved and filed this appeal.

4. Before us, it was first submitted that the contract has been cancelled by an authority not empowered to do so, meaning thereby that the Civil Surgeon-cum-Chief Medical Officer is not an authority who appointed him, and as such the order of cancellation by him was invalid in its inception. Learned counsel for the State draws our attention to Annexure-12, which is the Resolution of the District Health Society dated 24-7-2009 wherein the matter of termination of petitioner-appellant's contract has been dealt with in detail and unanimously all the members of the Society have approved and ratified the action of the Civil Surgeon, who is the Member Secretary of the Society, and as such the Executive of the Society. Thus, there is no gainsaying that the order of cancellation of the contract would be invalid for any reason.

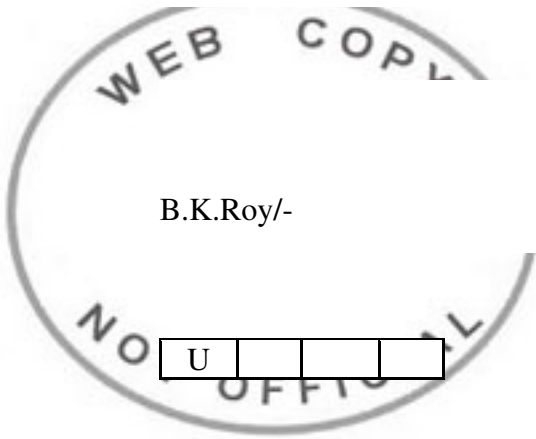


5. It is then urged that the order of the Society(Annexure-12) would show that serious allegations were made against the petitioner-appellant. No show cause had been issued to the petitioner. Suffice it to say, that it is this ground on which the learned Single Judge allowed the writ petition. That order has become final. We in the present writ petition are only concerned with the consequential order that had to be passed.

6. We are of the considered opinion that no interference is required to be made in the order, as passed by the learned Single Judge. Learned counsel for the petitioner-appellant submits that the State Government has been extending these contracts from time to time, and the people who were simultaneously appointed with the petitioner-appellant on similar contracts are still working. That is not wholly correct. Reference to Annexure-13, the policy decision of the Government to extend the contract, clearly stipulates that the contract would be extended subject to satisfactory service and not as a matter of right, across the board. Thus, extension of contract is a matter of discretion. It has not been done by the State without any pre-condition nor can it be demanded by any person in any manner. That being the situation, we cannot speculate whether the contract would be renewed or not, and in such a situation, the order, as passed by the learned Single Judge was the most appropriate order. However, we may observe, what the learned Single Judge also stated that any aspersion cast on the petitioner-appellant in the ex-parte order or proceeding will not be held against the petitioner-appellant for any other purpose.

7. We may also like to point out here that we are exercising the right of judicial review. Judicial review means that the Court will not sit in appeal over the orders but would only see whether there is manifest infirmity in the decision making process. In other

words, it is not an appeal from a decision but the decision making process.



B.K.Roy/-

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)