

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 406 of 2013
IN
Civil Writ Jurisdiction Case No. 6821 of 2003

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Shambhu Kumar, Son of Basudeo Prasad, Resident of Mohalla Shyam Nagar
Jehanabad Station, Police Station - Jehanabad, District- Jehanabad

.....Appellant

Versus

1. The State of Bihar, through Collector, Jehanabad
2. The Civil Surgeon-Cum-Chief Medical Officer, Jehanabad-Cum-Arwal

.... Respondents

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Appearance :

For the Appellant : Mr Bindhyachal Singh, Advocate

Mr. Umesh Kumar, Advocate

For the Respondents Mr. Kumar Alok, SC-8

Dr. Raj Kumar Singh, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-06-2016

The writ petitioner is the appellant in this appeal,
being aggrieved by orders passed in writ petition. The facts
are not in dispute.

Heard learned counsel for the appellant and
learned counsel for the respondent, and with their consent, this
appeal is being disposed of at this stage itself.

The mother of the writ petitioner/appellant was a
Health Worker in the State Service. She died in harness. The
writ petitioner/appellant sought compassionate appointment.
The Civil Surgeon, Jehanabad (now District - Arwal)
considered the matter and appointed him on compassionate



ground as Health Educator. It is not in dispute that Health Educator is a Class-III post. Writ petitioner/appellant worked for about 13 years. He was, then, issued a show cause notice as to the legality of his appointment. He filed reply to the show cause, which was heard, and then, the Civil Surgeon Jehanabad/Arwal passed the impugned order holding that the appointment having been made on Class –III post, the Civil Surgeon was not competent to make such appointment. He could only make appointment on class-IV Post. Accordingly, the writ petitioner/appellant was reverted to Class –IV post of Health Worker, on which post, his late mother was worked. In the writ petition, the challenge was made on the ground that writ petitioner/appellant not having committed any fraud and having worked for over 13 years could not have been reverted from Class-III post to Class IV post. The learned Single Judge dismissed the writ petition, but upon review, gave relief to the extent that, petitioner having been worked with his responsibility on Class-III post satisfactorily, there would be no recovery.

This Intra-Court Appeal is against the said judgment/order of the writ Court.

Learned counsel for the State, as before writ Court, now before us, submitted that firstly, the writ petitioner



even though entitled to compassionate appointment, his mother who died in harness being a Class-IV employee, he could not be considered for Class III post. The second submission was that, so far as Class III posts are concerned, they were State Cadre Post, and it was Bihar State Subordinate Service Commission alone, which could have made appointment and it was the said Commission that had, in fact, issued Advertisement for appointments even in the year 1990 for the post of Health Educator. Therefore, the appointment, as made, even though on compassionate ground by the Civil Surgeon was void, and the writ petitioner/appellant cannot make a grievance if he was reverted to Class IV post, to which Civil Surgeon was not competent to make appointment. Nothing has been brought on record by the writ petitioner/appellant to contradict the aforesaid ground.

However, so far as first contention of the State, that compassionate appointment could not be given to Class III post, is concerned, we do not find any substantive force, inasmuch as the compassionate appointment has to be made commensurate to the educational qualification of the person so being appointed. Therefore, the appointment of the writ petitioner/appellant to the Class III post cannot be faulted on

that ground alone.

Coming to the second ground that there being no materials to contradict the stand taken by the State that the Civil Surgeon was incompetent to make such an appointment on Class III post which had to be processed by the Subordinate Service Commission, as noted above, there is no option but to hold that the learned Single Judge did not consider it in dismissing the writ petition. On that ground, State is not in appeal from the order passed by the learned Single Judge.

However, we may observe that writ petitioner/appellant having satisfactorily and successfully worked on Class-III post for such a long time and having requisite qualification, if it is otherwise permissible before the Civil Surgeon to make any appointment to any other Class III post within his jurisdiction, the Civil Surgeon may consider the same in accordance with law.

With this observation, this appeal is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

R.K.Sinha/A.F.R.

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