

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18697 of 2014

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1. Dr. Govind Prasad Srivastava , son of Late Bindeshwari Prasad, Resident of Mohalla -"Kiran Kunj" , Harishchandra Stadium Road, P.O.-+P.S.+ District - Nawadah presently posted as Dental Surgeon , Sadar Hospital , Nawadah .

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Deptt. of Health , Bihar , Patna .
2. The Executive Director, State Health Society, Bihar, Patna.
3. The Regional Deputy Director, Health Services, Magadh Division, Gaya.
4. That District Officer -cum -Chairman, District Health Society, Nawadah .
5. The Civil Surgeon - cum - Chief Medical Officer -cum -Member Secretary , District Health Society , Nawadah .
6. The Deputy Superintendent , Sadar Hospital, Nawadah.
7. The Treasury Officer, Nawadah .

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Tiwary
Mr. Prahlad Kumar
For the Respondent State: Mr. AC to SC23
For State Health Society : Mr. K. K. Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
C.A.V. JUDGMENT
Date: 6-04-2016

The petitioner, who was working as a Dental Surgeon on honorarium with the State of Bihar and posted at Nawada, has filed the present writ application for a mandamus upon the respondent authorities to pay him Rs.30,000/- as honorarium w.e.f. the date of issuance of a resolution by the State Government dated 19th July, 2011 (Annexure-6). Since respondent authorities are not willing to extend that benefit and abide by the said resolution, he decided to file the present writ application. He also urges that the right of payment of

Rs.30, 000/- as honorarium stands corroborated even by Annexure-7.

2. The alternate prayer also on behalf of the petitioner is to pay him honorarium of Rs.500/- per day w.e.f. 1.4.2007 to 6.6.2010 which, according to the petitioner, he is legally entitled to for the services rendered by him as it has not been paid till date.

3. The petitioner, who was a Dental Medical Officer, superannuated from the post from Sadar Hospital, Nawada. He was appointed as a Member of the District Consumer Redressal Forum at Nawada. Subsequently, on the basis of a resolution No. 423 dated 17.5.2006, issued by the Department of Health and Family Welfare, Government of Bihar, petitioner was selected and engaged as a Dental Surgeon, in the Sadar Hospital, Nawada, on contract basis. He was to get a consolidated fee of Rs.500/- per day for a maximum of two days in a week. Annexure-1 is the letter of such engagement.

4. The petitioner gave his joining in the Sadar Hospital. He has rendered services and according to him, he was paid his remuneration till March, 2007. From April, 2007 the remuneration has been withheld for no apparent reason.

5. On 1.2.2009 the Executive Director, State Health Society decided to enhance the number of days of working for such Dental Surgeons from two days a week to six days a week. A Notification showing the name of the petitioner also has been brought

on record as Annexure-3.

6. It is the petitioner's stand that pursuant to Annexure-3 he gave his joining on 7.6.2010 and Annexure-5 supports that position. Petitioner states that he has been paid his remuneration of Rs.500/- per day for work of six days per week from 7.6.2010.

7. Subsequently, the Department of Health, Government of Bihar, issued Memo No. 816(2) dated 19.7.2011 by virtue of which the honorarium of Dental Surgeon, working on contract basis, has been raised to 30,000/- per month. The above resolution has been circulated to all Civil Surgeons of Bihar as per the order dated 23.2.2012, issued under the signature of the Joint Secretary of the department. Since the petitioner has not been given the benefit of Annexure-6 and 7, he moved the authorities several times. Since no response came, he filed the present writ application.

8. The Court directed the respondent authorities to file a counter affidavit. First a counter affidavit on behalf of respondent Nos. 5 and 6 i.e. Civil Surgeon cum Chief Medical Officer and the Deputy Superintendent of Sadar Hospital, Nawada. They take a plea that the petitioner is a retired employee. He was engaged on contract basis on a fixed honorarium. There is a notification relating to such persons, issued by the Department of Personnel and Administrative Reforms, Government of Bihar, which is Memo No. 2804 dated



29.3.2010, which mandates as per Clause 5(ka)(v) that the pension amount would be deducted from the honorarium. Yet another letter No. 4337 dated 23.3.2015 issued by the General Administration Department, has been annexed as Annexure-B, which is supposed to govern such payments and they take a plea that details of pension etc. has been demanded and once it is furnished, respondents will take steps.

9. When such a plea was taken, an I.A. has been filed which is numbered as 7814 of 2015. Petitioner wants quashing of the two resolutions, contained in Annexure-A and B of counter affidavit on the ground that the same cannot apply to the case of the petitioner since he has been engaged on a much prior date than the issuance of two notifications. It is also urged that such notifications cannot bind the present petitioner. The State would be bound by the contract entered between the petitioner and the respondents.

10. The Court thereafter directed the Principal Secretary, Department of Health, to file a counter affidavit as certain issues remained to be answered in the previous affidavit, of the Civil Surgeon.

11. The Principal Secretary takes emphatic plea that paragraph 2 of Annexure-6 clearly indicates that it is not meant for persons like the petitioner. Annexure-6 has been issued in relation to



such Medical Officers (Dental) who were selected to work as per resolution No. 1008(2) dated 23.8.2007 on a honorarium of Rs.15,000/- per month. This amount was enhanced to Rs.30,000/- per month for Medical Officers (Dental) and the same cannot be extended or adopted for the benefit of the likes of the petitioner, who was appointed or engaged with a fixed honorarium of Rs.500/- per day for two days in a week, which was subsequently enhanced to six days in a week. Counsel for the State submits that a wrong submission is being made with regard to Annexure-6. The State of Bihar has engaged different kind of Medical Personnel under different schemes and they will be governed by the scheme under which they came to be engaged. Annexure-6 is meant for a different class of people who were engaged as per resolution No. 1008 (2) dated 23.8.2007. Obviously, since the petitioner finds such remuneration to be more paying he has raised a bogie of the claim for payment of Rs.30,000/- per month as honorarium in terms of Annexure-6.

12. In addition to that, the Principal Secretary has provided the details of work of the petitioner and the payments which have been made to him from time to time. It is also stated categorically in para 15 that the Civil Surgeon has also been informed that if any other admissible due of the petitioner remains, the same should be paid in accordance with law.



13. Learned counsel for the petitioner has annexed an order at Annexure-8 wherein in similar circumstance a direction was issued by the learned Single Judge to pay a sum of Rs.30,000/- as honorarium.

14. This Court after carefully going through Annexure-8 and on re-reading of Annexure-6 and 7 comes to a considered opinion that Annexure-6 has not been properly appreciated by the learned Single Judge and the context on which Annexure-6 came to be issued.

15. There were different engagements on different terms by the State of Bihar for such work. Petitioner belongs to the category of retired personnel. Whereas there were Dental Doctors who were hired by the State of Bihar on a fixed remuneration of Rs.15,000/- initially, which has been raised to Rs.30,000/-. In the case of such Medical Officers (Dental), they are not drawing any kind of pension as they are freshly hired personnel. Petitioner has the advantage of drawing pension from the State of Bihar and in addition to that, he is getting remuneration as agreed on the basis of the engagement made of the petitioner. The only thing which changed for the petitioner was that number of days of such engagement went up from two days a week to six days a week.

16. The Court, therefore, opines that the principle of

equality under Articles 14 and 16 cannot be wrongly construed just like chalk and cheese cannot be equated. Therefore, merely because there is similarity of description of the position of such engagement, there cannot be a mandamus to apply every circular to every person whatever be the background under which such engagement was made of the two diverse set of people.

17. In view of the same, the decision contained in Annexure-8 seems to be per incuriam.

18. Writ application therefore has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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