

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.171 of 2015

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Anju Kumari Daughter of Basudeolal Sah Resident of Village- Milki, Police Station
Bhagalpur, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director In-Chief, Health Services, Government of Bihar, Patna.
4. The Director, Health Department, Government of Bihar. Patna.
5. The Regional Deputy Director, Health Services, Bhagalpur Division, Bhagalpur,
6. The District Magistrate, Bhagalpur, District - Bhagalpur.
7. The Civil Surgeon-cum-Chief Medical Officer, Bhagalpur.
8. The Additional Chief Medical Officer (A.C.M.O.) Bhagalpur.
9. The District - Immunization Officer, Bhagalpur.
10. The In-Charge Medical Officer, Primary Health Centre Jugdishpur, District –
Bhagalpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Diwakar Yadav, Advocate

For the Respondent/s : Mr. P.N.SHAHI, AAG-6

Mr. Manish Kumar, A.C. to AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2016

Despite three orders being passed in the present proceedings the Director-in-Chief, Health Services has not bothered to file his response in the light of the query made by this Court. Annexure-2 and Annexure-4 are the directives issued from the office of the Director-in-Chief, Health Services to the Civil Surgeon, Bhagalpur on the objections raised by the petitioner in respect of her transfer order dated 08.2.2014, holding the same *prima facie* illegal and requiring a report from the Regional Deputy Director, Health Services, Bhagalpur Division, Bhagalpur.



This matter was last considered on 30.08.2016 when a counter affidavit was filed by the Additional Director, Health Services enclosing a letter of the Regional Deputy Director, Health Services, Bhagalpur Division, Bhagalpur addressed to the Director-in-Chief in which it was clearly stated that no show cause was asked from the petitioner herein before issuance of the transfer order dated 08.2.2014 present at Annexure-1. Even when such is the position, the transfer order has initially resulted in the suspension of the petitioner passed on 14.3.2014 and ultimately in an order of penalty dated 25.11.2014 whereby the petitioner has been censored; her two increments have been withheld with cumulative effect and her pay and allowance have been restricted to the subsistence allowance drawn by her. Since the matter reached the Director-in-Chief, Health Services who *prima facie* appears to be satisfied with the complaint raised by the petitioner which resulted in a communication dated 02.3.2014 whereby the Civil Surgeon, Bhagalpur was required to respond to the query made by the Director-in-Chief, a copy of which is present at Annexure-2. The Director-in-Chief alongside also asked the Regional Deputy Director, Health Services, Bhagalpur Division, Bhagalpur to enquire into the matter and submit his report which was submitted on 17.7.2014 supporting the claim of the petitioner that the transfer order was issued without a show cause. This Court in the circumstances,

required the Director-in- Chief to inform as to the final orders passed on the exercise initiated by him. Unfortunately even when this Court has awaited an answer from the Director-in-Chief, Health Services as back as on 26.7.2016 and has adjourned the matter thrice thereafter but even today, the situation does not improve.

In the circumstances discussed and considering the opinion of the Director-in-Chief as to the transfer order reflecting from his letter dated 02.3.2014 and which also stands supported in the report of the Regional Deputy Director of Health Services dated 17.7.2016 enclosed at Annexure-A to his counter affidavit, in my opinion, the transfer order being penal in nature, it could not have been passed without opportunity of hearing to the petitioner. As a consequence, the order of transfer bearing Memo No. 602 dated 08.2.2014 insofar as it concerns the petitioner, is quashed and set aside. Since the order of penalty passed against the petitioner bearing Memo No. 3629 dated 25.11.2014 impugned at Annexure-8 is resting on the transfer order, the same is also quashed and set aside.

The writ petition is allowed.

The consequences shall follow.

(Jyoti Saran, J)

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