

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.584 of 2017

=====

Md. Shamshir Alam, Son of Md. Ahmad Hussain, Resident of Village- Motipur,
Police Station- Garhpura, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Special Secretary, Department of Health, Government of Bihar, Patna.
4. The Joint Secretary (Indigenous Medicines), Department of Health, Government of Bihar, Patna.
5. The Director, Indigenous Medicines Officer, Government of Bihar, Patna.
6. The Deputy Director, Department of Health, Government of Bihar, Patna.
7. The District Indigenous Medicines Officer, Begusarai, Bihar.
8. The Principal, Rajyakiya Ayodhya Shiv Kumari Ayurveda College, Begusarai-
Cum- Chairman of Enquiring Committee.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Adv.

For the Respondent/s : Mr. Manoj Kumar, AC to SC-12

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-03-2017

Heard Mr. Ajay Kumar, learned counsel appearing for
the petitioner and Mr. Manoj Kumar, learned Assisting Counsel to
Standing Counsel No.12 for the State.

With the consent of the parties the writ petition has been
heard with a view to its final disposal at the stage of Admission
itself.

The petitioner is aggrieved by the order bearing Memo
No.959 dated 24.10.2013 of the respondent no.5, the Director
Indigenous Medicines, Government of Bihar, Patna, whereby he has
proceeded to cancel the appointment of the petitioner on grounds



that the procedures required to be followed for appointment on group 'घ' post as provided vide letter no.432 dated 4.7.1983 has not been followed in the case of the petitioner inasmuch as there was no roster clearance, the name of the petitioner was not called for from the Employment Exchange nor the advertisement was published.

Mr. Ajay Kumar, learned counsel appearing for the petitioner has invited the attention of this Court to Annexures-1 to 6 to submit that while the petitioner was working on daily wage basis with the respondents as manifest from Annexure-1 series that a process for appointment of a Class IV employee was initiated. Learned counsel submits that in fact it is in consideration of the fact that the petitioner was working on daily wage basis that the District Indigenous Medical Officer, Begusarai recommended the name of the petitioner to the Collector for his appointment against a vacant sanctioned Class- IV post, however, in the meantime process for regular appointment was initiated and a selection committee was constituted which, inter alia, comprised of the Senior Indigenous Medical Officer, Government Ayurvedic Dispensary, Begusari, the Unani Medical Officer, District Joint Dispensary, Begusarai, the Homoeopathic Doctor, Rajkiya Homeopathic Dispensary, Begusarai and the District Welfare Officer, Begusarai vide order bearing letter no.28 dated 17.2.1993 of the District Indigenous Medical Officer,



Begusarai vide Annexure-3. He submits that the date of the meeting was fixed on 23.2.1993 for selection of Class IV employee under the general category and the petitioner was duly informed vide letter no.27 dated 17.2.1993 present at Annexure-4. He refers to the letter present at Annexure-4 to submit that the letter of the District Indigenous Medical Officer itself is a confirmation that the names were called for from the Employment Exchange and in which the name of the petitioner was also recommended by the District Employment Exchange, Begusarai. He submits that in the selection process so initiated the petitioner was found suitable and was appointed vide Memo No.40 dated 26.2.1993 present at Annexure-5. He submits that the petitioner gave his joining on 1.3.1993 vide Annexure-6 and has been continuing on the post. It is stated that while the petitioner was functioning as such that a complaint was received alleging irregularities in his appointment and the District Indigenous Medical Officer on enquiry did not find merit in the complaint. It is stated that not being satisfied another complaint was filed and when the District Indigenous Medical Officer made certain queries from the petitioner along with his explanation which was submitted by the petitioner vide Annexure-13. He submits that thereafter vide order bearing Memo no.157 dated 3.8.2010 present at Annexure-14 the salary of the petitioner was stopped, inter alia, on



grounds of large scale illegalities found in the appointment.

Mr. Ajay Kumar, learned counsel appearing for the petitioner next referred to an order passed by the District Establishment Deputy Collector, Begusarai present at Annexure-17 to submit that even the second enquiry confirmed that there was no irregularities in the appointment of the petitioner and the District Establishment Deputy Collector vide order passed on 4.1.2012 has specifically mentioned that the District Indigenous Medical Officer has not produced any document which would question the appointment of the petitioner and in case any such papers are produced by him necessary action can be taken.

It is stated that the petitioner represented before the Health Secretary for salary which was stopped since 2010 and even while the matter remained pending that a committee was constituted vide Annexure 23 again to enquire into the appointment of the petitioner who submitted their report vide Annexure-25. He submits that the Director, Indigenous Medicine, Bihar, Patna without bothering to satisfy himself whether or not the allegation are true, has mechanically proceeded to cancel the appointment of the petitioner. Learned counsel again with reference to the documents present at Annexures 3 and 4 has submitted that while Annexure-3 constituted a committee, Annexure-4 is a confirmation that the



names were called for from the Employment Exchange.

Mr. Manoj Kumar, learned Assisting Counsel to Standing Counsel No.12 appearing for the State while contesting the argument of the petitioner, has reiterated the position reflecting from the order impugned at Annexure-26 to argue that since there was a question mark on the issue of roster clearance, calling for names from the Employment Exchange and as to the constitution of the committee which did not contain a senior Medical Officer or the District Welfare Officer that has led to the cancellation of the appointment of the petitioner. He further submits that apart from the irregularities so noticed, the name of the petitioner also does not find mention in any of the panel maintained in the office of District Magistrate.

I have heard learned counsel for the parties and I have perused the records.

It has taken 20 years for the authorities in the Social Welfare Department at Begusarai to realize that the required procedure for appointment was not followed in the case of the petitioner. Perusal of the documents enclosed by the petitioner at Annexure-1 series and 2 to the writ petition which has not been contested on its genuineness, are confirmation of the fact that the petitioner was already working on daily wages with the respondents



and his name was duly recommended for appointment on regular basis but then the appointment in question is not sought to be questioned on grounds that it is on the basis of the recommendation present at Annexure-2. The order impugned at Annexure-26 of the Director, Indigenous Medicine, Bihar disqualifies the petitioner on grounds that the roster clearance was not taken, the appointment was not made from the panel maintained in the office of the District Magistrate or after calling for names from the Employment Exchange or through advertisement and that the committee constituted did not have the District Welfare Officer or Senior Medical Officer, on its panel. In my opinion, all these objections are only taken to be rejected in view of the documents on record.

Annexures 3 and 4 whereby committee was constituted and petitioner was informed of his interview respectively, have not been questioned on their genuineness. In fact while the committee so constituted to carry out the selection well consists of Senior Indigenous Medical Officer, Shri B.N. Mishra and the District Welfare Officer appears at Sl. No.4 but this does not satisfy the Director and the reasons are not explained. The mechanical manner in which the constitution of committee has been questioned is that though the District Welfare Officer is named at serial no.4 of the Committee, yet the Director has mentioned in his order that it did



not contain the District Welfare Officer. Both the objections on the constitution of the committee are contrary to the records of the proceedings and are accordingly rejected.

The issue regarding roster clearance stands answered by the letter at Annexure 3 whereunder the committee was constituted which clearly mentioned that the post belonged to the general category and the selection was to be made on the basis of interview of the candidate. The next objection is in regard to calling for names from the Employment Exchange and which again stands overruled by the letter present at Annexure-4 addressed to the petitioner wherein it is mentioned that the names so sponsored by the District Employment Exchange also included the name of the petitioner. The order of cancellation of appointment of the petitioner is thus a confirmation of mechanical application of mind by the Director, Indigenous Medicine.

The instances of the present kind are a confirmation of the unwarranted litigation generated by State. Raising issues of procedural illegalities in appointment process after two decades and even when there is no challenge to such appointment nor there is any objection on the qualifications to hold the post or that it is a backdoor appointment, is an avoidable exercise.

In result, the order bearing Memo No.959 dated



24.10.2013 of the Director, Indigenous Medicine, Bihar, Patna as circulated vide memo No.421 dated 2.12.2013 by the District Indigenous Medical Officer, Begusarai cannot be upheld and is accordingly quashed and set aside. The petitioner stands reinstated to his post with all consequential benefits which should be paid to him within three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09-04-2017
Transmission Date	NA

