

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15997 of 2012

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Rita Kumari D/O Sri Darbari Singh R/O Village- Keshaopur, P.O. & P.S.- Exangar Sarai, Distt.-Nalanda. At present posted as A.N.M. in the office of Medical Officer, in-charge Primary Health Centre, Barbora, Bhojpur at Ara

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary to Department of Health, Govt. of Bihar, New Secretariat, Patna
3. The Director in chief Health Services, Govt. of Bihar, New Secretariat, Patna
4. The Additional Director, Health Services, Govt. of Bihar, New Secretariat, Patna
5. The Civil Surgeon-Cum-Chief Medical Officer, Bhojpur, Ara

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary
For the Respondent/s : AC to Govt. Advocate - 13

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-05-2017

Heard Sri Dhananjay Kumar Tiwary, learned counsel for
the petitioner and learned A.C. to Govt. Advocate – 13.

2. The petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to issue writ of mandamus directing the respondents, particularly respondent no. 5/Civil Surgeon-cum-Chief Medical Officer, Bhojpur at Ara to grant and pay the amount of financial benefit in terms of Assured Career Progression Scheme (hereinafter referred to as ‘A.C.P. Scheme’) and other benefits.

3. It is case of the petitioner that she was appointed in the year 1990, as Auxiliary Nurse Midwifery (hereinafter referred to as



‘A.N.M.’), in Sahar Block under the control of Civil Surgeon-cum-Chief Medical Officer, Bhojpur at Ara. However, subsequently, w.e.f. 24-12-1991, she was terminated from the service. The termination order was challenged by her by filing a writ petition, vide C.W.J.C. No. 6311 of 1992, which stood dismissed on 24-06-1996. Thereafter, the petitioner preferred an appeal, vide L.P.A. No. 723 of 1996, which too stood dismissed and thereafter, the petitioner approached Hon’ble Supreme Court by filing an appeal, which was numbered as Civil Appeal No. 3976 of 2004 {arising out of S.L.P. (C) No. 17578 of 2003}. The said appeal was allowed by the Hon’ble Supreme Court and respondent/State was directed to reinstate the services of the petitioner within one month. However, the Hon’ble Supreme Court recorded the consent of the petitioner regarding foregoing her back-wages. The order of the Apex Court dated 9th July, 2004 in Civil Appeal No. 3976 of 2004 (**Annexure – 2**) is quoted hereinbelow:-

“Heard learned counsel for the parties.
Leave granted.

The appellant was appointed as Auxiliary Nurse Midwifery (A.N.M.) in the year 1990, and her service was terminated on 24-12-1991. The appellant challenged the same by way of a writ petition. The Division Bench of High Court dismissed the same on the ground that the appointment was not made in accordance with the rules as there was no specific advertisement for the appointment. The judgment of the Division Bench is challenged before us.

Counsel for the appellant drew our attention to the circular issued by the State Government on



26.2.86 and it is submitted that appointment of the appellant was made strictly in accordance with the circular issued by the Government. As regards these appointments, the High Court in certain cases has taken different view.

We do not want to express any view on this matter; however, in the facts and circumstances of the case, the respondent-State is directed to reinstate the services of the appellant within a period of one month. It is recorded that the appellant is willing to forego her back wages.

The appeal is disposed of accordingly.”

4. It is case of the petitioner that in compliance with the order of the Hon’ble Apex Court, the petitioner was reinstated and to this effect, an order, contained in Memo No. 880(6) dated 17-08-2004, was issued by the Director-in-chief, Health Services, Govt. of Bihar, Patna. By the said order, the Director-in-chief, in compliance with the order of the Hon’ble Supreme Court, cancelled earlier order, contained in letter no. 1989 dated 24-12-1991, whereby petitioner’s service was terminated. The said order has been brought on record, as **Annexure – 3** to the present writ petition and subsequently, the petitioner was allowed to join, as per the order of the Civil Surgeon-cum-Chief Medical Officer, Bhojpur at Ara, vide Memo No. 2656 dated 20-08-2004 (**Annexure – 4** to the writ petition).

5. It was submitted by learned counsel for the petitioner that since the petitioner was reinstated by the order of the Apex Court



and her termination order, which was issued in the year 1991, was already cancelled by the Director-in-chief, vide **Annexure – 3** to the writ petition, the status of the petitioner, which was prevailing prior to issuance of her termination order, was restored. He submits that once by the order of the Supreme Court, her status was restored, it will be considered that there was no break in service and if there is no break in service, obviously, petitioner had completed the period, which was sufficient for grant of A.C.P. and as such, a prayer has been made to allow the writ petition and direct the respondent to grant the benefit of A.C.P.

6. In this case, counter affidavit was filed on behalf of the respondent no. 5 i.e. Civil Surgeon-cum-Chief Medical Officer, Bhojpur at Ara.

7. Learned A.C. to Govt. Advocate – 13, by way of referring to statement made in paragraph – 18 of the counter affidavit, submits that she was reinstated in the year 2004 itself and as such, in absence of completion of 12/20 years of regular service, the petitioner under the scheme of A.C.P. was not entitled to get any benefit and petitioner has rightly been denied the same.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In the counter affidavit, it has not been disputed that order of petitioner's termination, as



A.N.M., which was issued in the year 1991, was already cancelled by the Director-in-chief, that too in compliance with the order of the Hon'ble Supreme Court. Once the termination order was itself withdrawn and that too in view of order of the Supreme Court, the Court is surprised to notice the stand of the State Government that still State Government has treated as if there was break in service. It is settled that once a termination order is set aside, the status of an employee is restored, as if there was no order of termination. In the present case, though the status of the petitioner was restored, as per direction of the Hon'ble Supreme Court, even then the respondent no. 5 has taken a casual approach and rejected the claim of the petitioner. It's hardly matters that the petitioner herself had foregone her claim for back-wages, but it does not mean that she has accepted regarding break in her service. Moreover, the order of the Apex Court, which has been quoted hereinabove, makes it clear that after the order of reinstatement, the petitioner's status was restored, that too by the order of the Director-in-chief.

9. In that view of the matter, the writ petition is allowed, with a direction to respondents to consider the case of the petitioner for grant of A.C.P. treating her service as continuous service right from her initial appointment i.e. from 1990 till today and pass appropriate order in accordance with law, preferably; within a period



of three months from the date of receipt/production of a copy of this order.

10. The writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.05.2017
Transmission Date	N/A

