

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.114 of 2017
IN
Civil Writ Jurisdiction Case No. 16644 of 2015**

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Ramesh Kumar Son of Sri Mahesh Ram resident of Vijay Nagar, Hanuman Nagar,
Police Station - Patrakar Nagar, District - Patna.

.... Appellant/Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department, New Secretariat, Patna.
2. The Joint Secretary, Health Department, New Secretariat, Patna.
3. The Deputy Secretary, Health Department, New Secretariat, Patna.
4. The Under Secretary, Health Department, New Secretariat, Patna.
5. Awadhesh Kumar Singh S/o Late Raja Prasad Singh resident of 305, Santosha Kunwar Complex, Bandar Bagicha, P.S. - Kotwali, District - Patna.
6. Rabindra Kumar Sinha S/o Sri Moti Prasad Sinha R/o Flat no. - 104, Lily Arcade, Road no. - 12, Rajendra Nagar, P.S. - Kadamkuan, District - Patna.

.... Respondents/Respondent/s

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Sr. Advocate
For the State : Mr. S D Yadav, AAG 9
For Respondent No. 5 : Mr. M N Tiwari
For Respondent No. 6 : Mr. Shekhar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 01-11-2017

Seeking exception to an order dated 23.12.2016 passed
by the learned Writ Court in CWJC No. 16644 of 2015 this appeal
has been filed under Clause 10 of the Letters Patent.

Claim of the petitioner-appellant for accruing the service
rendered by the petitioner as Drug Inspector, Ayurveda having been



rejected while granting him appointment on the post of Drug Inspector, Allopath the writ petition in question was filed.

Facts goes to show that the Bihar Public Service Commission (hereinafter referred to as 'the Commission') issued an advertisement for appointment on the post of Drug Inspector, Ayurveda. This was advertisement no. 12/90. Yet another advertisement was issued bearing no. 22/90 for appointment on the post of Drug Inspector, Allopath. The appellant was selected and recommended for the post of Drug Inspector, Ayurveda. However, as he had also applied for Drug Inspector, Allopath, he was selected and recommended for this post also on 09.12.1993. However, as the appellant was already working on the post of Drug Inspector, Ayurveda and thereafter on option he joined the post of Drug Inspector, Allopath. It is the contention of the petitioner is that he is entitled to the benefits accrued for his service rendered as he never resigned from the service for the post of the Drug Inspector, Ayurveda, on which he was working. The learned Writ Court evaluated the matter in detail and after taking note of all the statutory provisions as contained in the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the '1940 Act') has rejected the claim of the petitioner and in doing so, has found that seniority of the petitioner cannot be counted from the date of his joining as Drug



Inspector, Ayurveda as his service as Drug Inspector, Ayurveda came to an end once he opted for joining on the post of Drug Inspector, Allopath after appointment on the said post. In our considered view, the detailed reasons given and the consideration made by the learned Writ Court does not call for any interference.

Under the 1940 Act, there are specific statutory provisions pertaining to appointment of inspectors. On a perusal of the provisions it is seen that under Chapter IVA specific statutory provision prescribing the qualification and other requirement for appointment of Inspectors in Ayurveda, Siddha and Unani systems of medicine is provided whereas under Chapter IV general provisions are made for appointment of Inspector and their powers are stipulated under Sections 21, 22 and 23 of the 1940 Act. If we analyze the scheme of the 1940 Act, Chapter IV and Chapter IVA and thereafter the provisions pertaining to regulating of the powers with regard to appointment of these posts we find that even though under the Service Rules there may not be two different cadres but the appointment of Inspector both in Allopath and Ayurveda are made on account of different statutory provisions being formulated prescribing statutory duties to them and that is why both the posts are treated to be different based on the statutory provisions and even appointments have been made separately for both these posts by



issuing two different advertisements and conducting two different selection process. That being so, contention of the petitioner that the posts are interchangeable and therefore the seniority in the cadre of Ayurveda Inspector should be counted may look attractive but once work on the posts and their appointments are governed by statutory provisions and the post itself is statutory in nature, i.e. “inspectors” under the 1940 Act wherein different statutory provisions are contemplated for an Inspector dealing with allopath medicines and allopath products and an Inspector for Ayurveda, Siddha and Unani system of medicines, we are of the considered view that the learned Writ Court has not committed any error in rejecting the claim of the appellant.

Accordingly, we find no merit in the claim made by the appellant. However, learned counsel tried to indicate that the lien of the appellant in the cadre of Drug Inspector, Ayurveda has not been terminated and therefore the petitioner would be entitled to go back to this cadre where his lien is still maintained. If that be so, the appellant may take up the issue with the authorities of the State Government and it would be for the authorities of the State Government to consider the claim of the appellant as this issue seems to have been not raised before the Writ Court we see no reason to interfere into that aspect of the matter in this appeal.



With the aforesaid observations, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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