

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1824 of 2017

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Anjani Kumar Dwivedi, Son of Late Muralidhar Dwivedi, resident of village +
P.O. Salempur, P.S. Amarpurm District - Banka

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna
2. The Director in Chief (Administration), Health Directorate, Government of
Bihar, Patna
3. The District Magistrate, Banka
4. The Civil Surgeon Cum Chief Medical Officer, Banka
5. The District Selection Committee, through District Magistrate, Banka
6. The Deputy Collector (Establishment), Banka
7. The Additional Collector, Banka
8. The Deputy Development Commissioner, Banka
9. The District Fisheries Officer, Banka

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr.Adv.
Mr. Manoj Kumar, Adv.

For the Respondent/s : Mr. Rana B.N.Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-03-2017

Heard Mr. Ganpati Trivedi, learned Senior Counsel
appearing for the petitioner, who appears alongwith Mr. Manoj
Kumar, Advocate on Record. Mr. Rana Bhupendra Narain Singh, AC
to GA-10, appears for the State.

Pleadings are complete and with the consent of the parties
the matter has been heard with a view to final disposal at the stage of
admission itself.

The petitioner is aggrieved by the decision of the District
Selection Committee presided by the District Magistrate, Banka and
comprising of Civil Surgeon, Banka, Deputy Collector



(Establishment), Additional Collector and the Deputy Development Commissioner, who on 16.1.2017 have taken a decision to cancel the contract employment of the petitioner and which decision bearing Memo No. 32 dated 25.1.2017 is impugned at Annexure 8. The petitioner is also aggrieved by the consequential order issued bearing Memo No. 31 dated 25.1.2017 impugned at Annexure 10.

Mr. Ganpati Trivedi, learned Senior Counsel for the petitioner, while accepting the limitations attached to a contract employment particularly where it relates to a post retiral engagement, submits that the issue raised by the petitioner is in the decision making process. He submits that although the petitioner after being found suitable on his service career as well as on his medical condition, was engaged on contract basis for a period of one year by a decision taken by the said Committee on 28.9.2016, a copy of which is placed at Annexure 3 and following which a formal order was issued bearing Memo No. 3272 dated 30.9.2016 engaging the petitioner against the post of Lipik for a period of one year beginning from 1.10.2016 to 30.9.2017. However, soon thereafter and for the reasons exclusively within the domain of the respondents, they have reviewed this decision in reference to a recommendation of the Medical Board dated 25.9.2015, whereby in consideration of the heart ailment of the petitioner, he was exempted from election duty.

Mr. Trivedi, learned Senior Counsel, has referred to the



recommendation of the Civil Surgeon cum Chief Medical Officer addressed to the District Magistrate, Banka dated 24.9.2015 present at Annexure 9 to submit that this exemption took place one year prior to the present engagement. He submits that the petitioner was to retire with effect from 30.9.2016 and thus was examined by the Medical Board on 7.9.2016 presided by the Civil Surgeon, who despite knowing the heart ailment of the petitioner, has recommended him fit for duty with regular medication. He next refers to the proceeding of the District Selection Committee held on 28.9.2016 at Annexure 3 to submit that paragraph 5 of the minutes would reflect a clean service career of the petitioner and which also includes a recommendation on his physical medical condition by the Civil Surgeon. He submits that with open eyes and considering the career and medical report of the petitioner that the engagement was approved for a period of one year by the Committee and following which the petitioner continued on his post with effect from 1.10.2016 but within three months thereafter, that a decision was taken by the Committee to unsuit the petitioner on medical grounds by charging him with suppression. He submits that the foundation for the impugned order is incorrect for everything was in open before the Committee when they decided on the engagement of the petitioner.

The argument of Mr. Trivedi has been contested by Mr. Rana B.N.Singh, learned State Counsel, and who has merely



reiterated the decision emanating from the impugned order to submit that the petitioner has suppressed his medical condition and that in support thereof learned State Counsel has relied upon the statement made in paragraphs 10 and 12 of the counter affidavit.

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

Although interference in the matter of contractual employment is rather circumscribed but then the decision making process has to be fair and transparent. Reference is made to the judgment of the Supreme Court reported in 2012(1) PLJR (SC) 321 (**Gridco Ltd. & anr. v. Sri Sadananda Doloi & ors.**) wherein the Court has discussed the scope of interference in matters of contractual employment where the order violates the principles of natural justice or is bordering on perversity. The case in hand is on even worse footing. The reason assigned by the Committee to unsuit the petitioner is no reason at all. Paragraph 3 of the impugned resolution of the Committee passed on 16.1.2017, impugned at Annexure 8, would show that a ground has been assigned that the medical condition of the petitioner was not reviewed by the Committee when it met for his consideration on his candidature on 28.9.2016. In my opinion, this is an incorrect foundation and stands falsified by the resolution dated 28.9.2016 itself more particularly paragraph 5 which notices the stand of the Civil Surgeon, who informed the Committee Members



regarding the career report of the petitioner as well as on his medical condition. The medical report of the petitioner as to his suitability to the engagement is present at Annexure 2 and is dated 7.9.2016 presided by the Civil Surgeon, Banka who is also the Member of the Selection Committee. It is thus clear that the Civil Surgeon duly informed the Committee regarding the medical condition of the petitioner and there was no suppression of fact. The Medical Board's report while accepting that the petitioner is an Ischemic heart patient yet found him fit for his duty with regular medication. The Civil Surgeon who has certified the medical condition of the petitioner and recommended him for contractual engagement was a part of the decision making process and neither he nor the other Committee Members can be permitted to shift their stand for reasons which are not attributable to something which has taken place consequent upon engagement of the petitioner.

There is no change in the circumstance since after the engagement of the petitioner vide resolution present at Annexure 3 and the appointment order present at Annexure 4. The Committee Members have wronged themselves to rely upon the decision of the Medical Board taken on 25.9.2015 which was in context with exemption of the petitioner from election duty. It is obvious that the reasons of disengagement of the petitioner put to question herein is other than those stated in the impugned order because an event which



took place one year prior to the retirement of the petitioner and was much known to the Selection Committee when they decide to recommend the name of the petitioner, cannot be made an excuse for the impugned decision. The order is also unsustainable for it lack of application of mind inasmuch as even when resolution No. 2804 dated 29.3.2010 stands superseded by the resolution of the General Administration Department bearing Memo No. 10000 dated 10.7.2015 brought on record vide Annexure 'C' to the counter affidavit, yet the Committee is ignorant of this development to rely upon a superseded resolution dated 29.3.2010.

For the reasons aforementioned, the impugned resolution is neither sustainable on merits nor on transparency nor on application of mind and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.03.2017
Transmission Date	NA

