

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1989 of 2016

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Tarkeshwar Upadhyay Son of Sri Paras Nath Upadhyay, Resident of Village -
Kohari, P.S. - Bhabhua, District - Kaimur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. State Health Society, Bihar through its Executive Director, Parivar Kalyan Bhawan, Sheikhpura, Patna.
3. District Magistrate - cum - Chairman, District Health Society, Kaimur Bhabua.
4. Civil Surgeon - cum - Secretary, District Health Society, Kaimur, Bhabhua.
5. Deputy Superintendent, Sub Divisional Hospital, Mohania, District - Kaimur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Adv.
Mr. Shiv Kumar, Adv.
Mr. Sahjanand Sharma, Adv.

For the Respondent/s : Mr. Shashi Shekhar Tiwary, AC to AAG-15
For the State Health Society: Mr. K.K.Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-12-2017

Heard Mr. Banwari Sharma, learned counsel appearing for the petitioner, Mr. Shashi Shekhar Tiwary, AC to AAG-15, for the State as well as District Health Society and Mr. K.K.Sinha, learned counsel appearing for the State Health Society.

The petitioner is aggrieved by the order bearing Memo No. 1564 dated 27.11.2015 passed by the State Health Society, Kaimur whereby in consideration of recommendation of the petitioner for extension of his engagement as Block Health Manager, Sub-divisional Hospital, Mohania, a decision has been taken for his removal, inter alia, on three grounds, namely:



(a) The petitioner possessed Post Graduate Diploma in Business Management from Annamalai University, which is a one year Diploma course although the qualification prescribed in the advertisement required the applicant to have undergone a degree or a Diploma course with a two year curriculum.

(b) Although the post was reserved for Backward Class and even though two of such applicants did not choose to join, yet it should have been offered to a third applicant under the said category but was offered to the petitioner.

(c) The appointment of the petitioner was not approved by the District Magistrate.

The order of the District Health Society, impugned at Annexure 13, has been confirmed by the appellate body i.e. the State Health Society. A copy of the order bearing Memo No. 1593 dated 28.6.2017 passed by the appellate authority is placed on record vide Annexure 16 to I.A.No. 5761/2017.

On leave sought, the prayer of the petitioner to question the same in the present proceeding is allowed and I.A.No. 5761/2017 is accordingly allowed.

Since the appellate order is in continuation of the proceedings thus opportunity was given to the respondents to respond thereto vide order passed on 20.11.2017 and thus there is no



requirement to grant any further time and the matter proceeds with a view to final disposal.

The brief summary of facts essential for disposal is that an advertisement was issued by the State Health Society, a copy of which is placed at Annexure 2 to the writ petition inviting applications for appointment on the post of Health Manager and Accountant. The advertisement at Annexure 2 would show that there were 535 posts of Health Manager and equal number of posts of Accountant. The qualification prescribed under the advertisement in so far as appointment of Health Manager is concerned, required the applicants to have a Degree or Diploma in Hospital Management/ Health Management or MBA with an experience of two years in the health sector.

The petitioner was considered against the post of Health Manager and communication of the Civil Surgeon cum Secretary, District Health Society at Annexure 3 would confirm that he was selected from the waitlist and required to submit his documents for appointment against the post of Health Manager. The directions as contained in Annexure 3, which is a letter dated 19.11.2009 of the Civil Surgeon cum Secretary, State Health Society was followed by an order dated 1.12.2009 of the same authority in respect of appointment of the petitioner on the post of Block Health Manager, a



copy of which is at Annexure 4. Annexure 5 is an agreement entered in between the petitioner and In-charge Medical Officer, Adhaura, Kaimur on his contractual engagement against the post of Health Manager for the period 2.12.2009 to 2.12.2011.

While the petitioner was discharging his duty following his appointment as Health Manager that vide order dated 7.7.2012 of the Civil Surgeon cum Secretary the petitioner was transferred to the Primary Health Centre, Bhagwanpur in the same capacity. The In-charge Medical Officer, Primary Health Centre, Bhagwanpur in consideration of the fact that the contractual period of the petitioner was coming to an end recommended for his extension vide letter dated 30.11.2012 addressed to the Civil Surgeon cum Secretary, State Health Society at Annexure 7 to the writ petition. It is following the recommendation so made that the Civil Surgeon cum Secretary, State Health Society, Kaimur vide his letter dated 5.3.2013 informed the In-charge Medical Officer, Primary Health Centre, Bhagwanpur as regarding the extension of contract of the petitioner for further three years ending on 2.12.2015, a copy of which is at Annexure 8. The petitioner was transferred to Mohania under the orders of the District Magistrate as the Chairman, District Health Society, vide Memo No. 266 dated 24.2.2014, a copy of which is at Annexure 9.

Since the contractual period of the petitioner was coming to



an end on 2.12.2015 that the Superintendent, Sub-divisional Hospital, Mohania vide his letter dated 20.10.2015 addressed to the Civil Surgeon cum Secretary recommended for his extension while praising his work conduct vide Annexure 10.

The records confirm that until such time there was no objection from any quarters as to the continuation of the petitioner on the post of Block Health Manager since after his appointment in the year 2009 either on work conduct or qualification. It is when the issue came for grant of 3rd extension in consideration of such recommendation, that for the first time the Civil Surgeon cum Chief Medical Officer, Kaimur who all along recommended for extension of contract of the petitioner, has taken a turn around to question the very appointment of the petitioner. The Civil Surgeon cum Chief Medical Officer, Kaimur while issuing notice on 12.11.2015 vide Annexure 11 has observed that the contract of the petitioner was coming to an end on 2.12.2014 even though the said Civil Surgeon vide his earlier letter dated 5.3.2013 at Annexure 8 informed the In-charge Medical Officer regarding extension of contract of the petitioner until 2.12.2015. Apparently the petitioner was put on a mechanical notice dehors the records.

An exhaustive reply was given by the petitioner to the allegations, a copy of which is at Annexure 12, and which is followed



by the impugned order passed by the District Health Society in refusing to extend the contract of the petitioner on grounds stated hereinabove which order has been confirmed by the State Health Society vide order impugned at Annexure 16 to the interlocutory application. Feeling aggrieved the petitioner is before this Court.

Mr. Sharma, learned counsel for the petitioner, has been rather brief in his argument to submit that the reasons assigned in the impugned order are contrary to the materials on record for neither the essential educational qualification as per Annexure 2 required an applicant to have a degree of two year curriculum nor there is anything on record to show that the petitioner has encroached on post meant for reserved category.

It is noting the submission of Mr. Sharma that learned counsel for the State Health Society as well as the District Health Society were given time to address the Court and whereafter the matter is put up today. While Mr. Tiwary, learned State Counsel defending the order of the District Health Society has ventured to enter into the issues of appointment of the petitioner, Mr. Sinha has also chosen to rely upon paragraph 4 of the order of the District Health Society to question the appointment of the petitioner on a post meant for Backward Category candidate.

I have heard learned counsel for the parties and have



perused the records.

It is rather peculiar that the petitioner having been appointed following duly constituted selection process conducted by the District Health Society, Kaimur way back in 2009, it is after six years and after grant of two extensions that the District Health Society has woken from slumber to comment upon the initial appointment of the petitioner on the issue of qualification as well as roster points.

The case in hand is another example of an unwarranted litigation generated. The mechanical manner in which the District Health Society, Kaimur has proceeded in the matter can well be evident from the fact that even though there is no such prescription in the advertisement that an applicant should have a Management degree of a two year curriculum rather the mention of two years is in respect of experience expected of an applicant but yet one of the grounds for removal of the petitioner assigned is that, he did not possess the requisite Management qualification which opinion is contrary to the stipulations in the advertisement.

This singular aspect in my opinion is sufficient to quash the impugned orders because it is a confirmation of the mechanical manner in which the matter has been dealt by the respondents.

Even the roster issue does not persuade this Court to go for any examination after a lapse of almost eight years since the initial



appointment of the petitioner because the letter dated 19.11.2009 of the Civil Surgeon at Annexure 3 itself confirms that the petitioner was picked up from the waiting list and paragraph 4 of the proceeding of the District Health Society impugned at Annexure 13 is a confirmation of the fact that it is after offering the appointment to two candidates belonging to the Backward Category who refused to join that the post was offered to the petitioner. Yet such objection is being raised after such long lapse.

It is thus not in dispute that none from the Backward Category either chose to join or came forward to claim appointment and perhaps it is for this reason that offer was made to the petitioner at Annexure 3 from the waiting list. Now, when there was a conscious decision of the District Health Society, Kaimur to appoint the petitioner from the waitlist category in the circumstances so prevailing and which appointment has been validated by grant of extensions as confirmed from Annexure 8, the order of the District Health Society as affirmed by the State Health Society has traveled beyond records and the opinion expressed is contrary thereto.

Mr. Tiwary informs that a complaint was made by a candidate from other Backward category but obviously the same was not acted upon because the appointment of the petitioner was neither challenged nor interfered with. In so far as the objection on lack of



approval of the District Magistrate is concerned, the matter having travelled such a distance with the specific plea taken by the petitioner at Annexures 12 and 14 that his appointment had approval of the District Health Society, the objection is only taken for rejection.

In my opinion, the case of the petitioner for extension of contract certainly could not have been rejected on grounds mentioned in the impugned order rather it requires a consideration afresh in the light of the recommendation made by the Superintendent, Sub-divisional Hospital which endorses his work efficiency. The matter requires a fresh consideration by the District Health Society, Kaimur for recording its opinion without being prejudiced by their earlier opinion so expressed and demolished.

For the reasons discussed, the order bearing Memo No. 1564 dated 27.11.2015 passed by the District Health Society, Kaimur, impugned at Annexure 13, and the order bearing Memo No. 1593 dated 28.6.2017 of the State Health Society, impugned at Annexure 16 are quashed and set aside.

The matter is remitted to the District Health Society, Kaimur for their opinion afresh on the recommendation present at Annexure 10 and in the light of the observations made hereinabove within a period of six weeks from the date of receipt/ production of a copy of this order.



The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2018
Transmission Date	NA

