

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.879 of 2015
IN
Civil Writ Jurisdiction Case No. 1638 of 2015**

- =====
1. Surjit Kumar, S/o Sri Suresh Prasad Sah, R/o Mohalla- Dalhatta, P.S. Kowali, District- Munger.
 2. Kunal Kumar, S/o Late Lala Prasad, R/o Chapotipipar P.S.- Ghosi, District- Jahanbad.
 3. Abu Nasar Arif, S/o Late Maroor Alam, R/o Guljarbagh, P.S.-Thana Chouk, Bikramganj, District- Rohtas (Sasaram).
 4. Namit Kumar, S/o Late Triguna Prasad, R/o Barhangopal P.S. + District- Siwan.
 5. Kumar Nayan, S/o Sri Vishwanath Prasad, R/o Mazar Gali, P.S. - Shastrinagar (Sheikhpura), District- Patna.

.... Appellant/s

Versus

1. The Union of India, through Director General (NCD) Directorate General of Health Services, Ministry of Health and Family welfare, Nirman Bhawan, New Delhi.
2. The State of Bihar, through, Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Executive Director, State Health Society, Bihar, Patna.
4. The Additional Executive Director, State Health Society Bihar, Patna.
5. The Senior Deputy Collector -cum- Incharge Human Resources state Health Society, Bihar, Patna.
6. The State Programme Officer, State Health Society, (NPCDCS) Bihar, Patna.
7. The District Magistrate- cum- chairman, district Health Society, Vaishali/Muzaffarpur/ Rohtas/ Kaimur/ East Champaran and West Champaran.
8. The Civil Surgeon- cum- Member Secretary, District health Society, Vaishali/ Muzaffarpur/ Rohtas/ Kaimur/ East Champaran and West Champaran.

.... Respondent/s

with

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**Letters Patent Appeal No. 1344 of 2015
IN
Civil Writ Jurisdiction Case No. 2247 of 2015**

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Anand Mohan & Ors

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

(In LPA No.879 of 2015)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Raj Kumar Singh
For Union of India : Ms. Kanak Verma, CGC



For the State : Mr. Ashok Kumar Debey
For Health Society
(Respondent nos. 3 to 6) : Mr. K K Sinha
(In LPA No.1344 of 2015)
For the State : Mr. Santosh Chandra Bhaskar, AC to GP 11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-09-2017

Seeking exception to an order dated 02.04.2015 passed by the learned Writ Court in CWJC No. 2681 of 2015 and CWJC No. 1638 of 2015 both these appeals have been filed under Clause 10 of the Letters Patent.

Petitioners were appointed on contract basis and when their contract was brought to an end, writ petitions in question were filed challenging their disengagement. The learned Writ Court finding that the petitioners were engaged on contract post as per the guidelines and policy decision of the Union of India indulgence into the matter cannot be made and dismissed the writ petitions.

Before us, a two-fold submission has been made. It is stated that after the appellants' contract/engagement was brought to an end again appointments are being made on contract basis for the same work which was entrusted to the appellants and as the replacement of one contract employee with another contract employee is not permissible and placing reliance of an order passed



by a learned Single Judge of this Court on 17.06.2014 in CWJC No. 20957 of 2013 (Bimlesh Kumar Pandey & Ors. vs. State of Bihar), these appeals have been filed.

It is the case of the appellants that as the work for which the appellants were appointed still continue, it was not necessary to terminate the contract appointment of the appellants and, therefore, indulgence is sought for.

Having heard learned counsel for the parties at length, I find that during the implementation of the 11th Five Year Plan, a national programme for prevention and control of cancer, diabetes and cardiovascular diseases was launched by the Govt. of India in the year 2010. It was to be implemented in 100 districts. For implementing the aforesaid programme the contract appointment was made by the State Health Society, Bihar, and the appellants were appointed on contract post as Finance-cum-Logistic Officer. Appointments of the appellants made were for this particular project under the National Rural Health Mission in the year 2011, the contract for a period of one year and it was clearly stipulated in the contract that the contract is co-terminus with the scheme and no claim for regularization or regular appointment would be entertained. It is seen from the record that in the year 2013, the Government of India came out with new terms for man power



requirement and implementation of the scheme, the position changed and initially under the 11th Five Year Plan as the project was being implemented only in 100 districts under the 12th Five Year Plan new schemes were formulated and it was decided to implement the scheme throughout the country and with regard to the modified schemes new operational guidelines were prepared in accordance with the scheme. Accordingly, the terms and conditions for contract appointment, posts were also modified, higher salary, higher qualification and change in designation were implemented and further steps were taken for making new contract appointment under the changed scheme and, therefore, it is the case of the respondents that it is not continuation of the earlier scheme. The earlier scheme has come to an end which was being implemented in the 10th Five Year Plan. Now, under the 12th Five Year Plan the scheme is being implemented in a modified form and, therefore, the contract appointment of the petitioners were terminated and fresh process initiated for contract appointment in the modified scheme.

We find from the aforesaid fact that has come on record that the appellants' appointment initially under the 10th Five Year Plan was a temporary contract appointment. It has come to an end and the appellants cannot make any grievance with regard to the same as the appellants being contract employees cannot have any



right to continue in service once the new scheme came into force.

Contentions of the appellants that by change of designation after termination of the appellants' service again appointment on contract basis is being made for the same scheme is not correct. The scheme now implemented is a new scheme under the 12th Five Year Plan with modification made due to functional change and restructuring made in the new scheme which includes change of designation, change of qualification, and even change of terms and conditions of contract appointment. That being so, the appellants can only have the right to seek appointment in the new scheme on contract basis process of which has already been initiated and we are informed that some of the appellants have again been appointed as per the fresh terms and condition. Contention of the appellants that by terminating their contract appointment again contract appointments are being made replacing them is not correct. In fact, after terminating the contract appointment of the appellants due to closing of the original scheme new contract appointments are being made in the new scheme looking to changed requirement of the new scheme. That being so, we see no ground for indulgence into the matter.

Contention made by the appellants based on the case of Bimlesh Kumar Pandey (supra) is entirely different. That was case



where appointment of 76 English Instructors in the Industrial Training Institute in the State of Bihar was undertaken and after the contract period expires fresh appointment on contract basis for the same post were made by terminating the contract appointment of the petitioners and it was in the light of those circumstances that the Writ Court held that one contract employee cannot be replaced by another contract employee when the work is continuing. The facts of the said case are entirely different and cannot be made applicable to the present case where the entire scheme under which the earlier contract appointment was granted is now changed while implementing the scheme in the modified form under the 12th Five Year Plan.

Taking note of all these circumstances, we see no reason to make any indulgence into the matter. The appeals are accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

