

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16547 of 2016

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Md. Akbar Ali son of Late Abdur Razaque, resident of village- Lakhnubigha, P.S. Asthawan, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Director in Chief (Administration) Health Services, Bihar, Patna.
3. Director in Chief (Nursing) Health Services, Bihar, Patna.
4. Incharge Officer, State Health Institute, Patna.

.... Respondents

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Appearance :

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

For the Respondent/s : Mr. Prabhu Nr. Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-07-2017

Heard Mr. Shiv Kumar, learned counsel appearing for the petitioner and Mr. Prabhu Narain Sharma, AC to AG, for the State.

The petitioner is aggrieved by portion of the order bearing Memo No. 9(12) dated 5.1.2016, whereby he has been transferred to the State Health Society in exigencies of service.

The petitioner filed a representation at Annexure 2 and it has been rejected by the Director-in-Chief (Administration), Health Services, Bihar, Patna vide Memo No. 464(12) dated 30.5.2016. Copies of the orders are impugned at Annexures 1 and 3 respectively to the writ petition.

A very short submission has been made by Mr. Shiv Kumar, learned counsel for the petitioner, in reference to two judgments of the



Supreme Court, since reported in (1997)8 SCC 372 (**State of Punjab & ors. v. Inder Singh & ors.**) and (1999) 4 SCC 659 (**Umapati Choudhary v. State of Bihar & anr.**), to submit that undisputedly the services under the State Health Society is outside cadre of the State Health Services and thus, neither the petitioner could have been transferred in ordinary course of service nor could have been sent for deputation without obtaining consent.

A specific issue raised to such effect has been negated by the respondents in the counter affidavit on grounds that it is not tenable in law.

I have heard learned counsel for the parties and I am surprised on the stand taken by the respondents which is contrary to the law settled in this regard. It is not in dispute that the services under the State Health Society is outside cadre of the State Health Services and thus, the petitioner coming under the cadre of State Health Services, could not have been transferred in normal course of service. The petitioner also could not have been sent on deputation without consent being obtained and it is rather unfortunate that even when this issue is no more res integra, an Officer of the State Government holding a high post as a Director-in-Chief (Administration) lacks knowledge of the legal position. It is such absence of legal understanding that leads to unwarranted litigation. Paragraph 18 of the



judgment in the case of Inder Singh (supra) and paragraph 8 of the judgment in the case of Umapati Choudhary (supra) leave no room for confusion that neither an Officer can be transferred outside his cadre nor he can be sent on deputation without consent.

In view of the law settled, the order of transfer dated 5.1.2016 together with rejection of the representation passed by the Director-in-Chief (Administration), impugned at Annexures 1 and 3 respectively to the writ petition, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with consequential reliefs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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