

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7947 of 2009

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1. Vimal Kishore Jha son of late Mahabir Jha resident of village and P.O. Shahpur P.S. Sonebarsaraj Dist. Saharsa. At present non medical assistant 20 Bedded Adarsh Laprosy control Unit, Rudrapura Dist Rohtas
 2. Sindu Kumar son of late Harinandan Prasad resident of village and P.O. Sahatha (Lala Tola) P.S. Bhagawanpur Dist Vaishali (Hajipur) At present non medical assistant 20 Bedded Adarsh Laprosy control Unit, Rudrapura Dist Rohtas
 3. Bimal Prakash Gupta son of Sri Ram Bilash Tanti resident of village and P.O. Naugachhia P.S. Monghyr Mufassil Dist. Monghyr. At present non medical assistant 20 Bedded Adarsh Laprosy control Unit, Rudrapura Dist Rohtas

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary-cum-Commissioner to Govt. Department of Finance, Bihar Patna.
3. The Principal Secretary-cum-commissioner to Govt. Department of Health, Bihar, Patna.
4. The Director-in-Chief, Health Services, Bihar Patna.
5. The Additional Director, Health Services-cum-Controlling Officer Leprosy eradication Programme, Bihar, Patna
6. The State Leprosy Programme Officer, Bihar Swasthya Bhawan Sultanganj Patna 6
7. The District Magistrate, Rohtas, Sasaram
8. The Civil Surgeon-cum-CMO Rohtas Sasaram
9. The Additional Chief Medical Officer, Rohtas, Sasaram
10. The District Leprosy Officer, Rohtas, Sasaram
11. The Medical Officer I/C 20 Bedded Adadrsh Leprosy Control Unit, Rudrapura, Dehri –on-son District Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Advocate
Mr. Sunil Kumar No. II, Advocate
Mr. Sharesan Kumar, Advocate

For the State : Mr. Subhash Prasad Singh, Ga 2
Mr. Dilip Kumar, AC to GA 3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-03-2018

Heard counsels for the petitioners and the respondent
State.



2. The petitioners have approached this Court challenging the decision dated 24.03.2009 bearing no. 190(ii) issued by the Director-in-Chief, Health Service, Bihar whereby and where under the decision of the State Government has been communicated that the petitioners' services as non-medical Assistant in the Model Leprosy Control Project, Rudrapura in the District of Rohtas with effect from the date when it was taken over by the State of Bihar, i.e., 29.03.1999 would be considered for the purpose of giving the benefits of ACP and all other purposes.

3. Counsel for the petitioners submits that as per the communication of the Government of Bihar which is Annexure 2, dated 02.12.1982, the services of the petitioners' rendered under the Damien Foundation, Belgium (hereinafter referred to as 'the Foundation') even prior to take over of their services on 29.03.1999, would have to be taken into consideration for the purposes of calculating their length of service for eligibility in respect of benefit of ACP. As per Annexure 2 the Unit was to be taken over by the State of Bihar 5-7 years after its establishment in the year 1984. State of Bihar has delayed taking over of the institute. Therefore, they cannot be made to loose in terms of exclusion of their period of service prior to 29.03.1999 i.e., the date on which the Unit had been taken over.

4. It has also been submitted that petitioners' appointments were made pursuant to the advertisement dated 09.09.1982 which also contemplated that the petitioners' salary and allowances will be as per the rules and regulations of the Bihar Government.

5. The undisputed background of the instant case is that in view of certain proposal made by the Foundation which is a private voluntary organization, the State of Bihar decided to donate a piece of



land near Dehri on Sone to facilitate their mission of establishing a Leprosy Hospital in the State of Bihar. Accordingly, for the said purpose the State of Bihar sent its communication which is dated 27.04.1982 Annexure 1 to the writ petition. The Foundation thereafter, issued the advertisement dated 09.11.1982 for the post of non-medical staff pursuant to which the instant petitioners applied

6. There was stipulation in the said advertisement that the “salary and allowances will be as per rules and regulations of the Bihar Government”. Thereafter, the Health Department under letter dated 02.12.1982 bearing memo no. 1404(ii) sent a communication to the Foundation granting permission to establish 20 bed Model Leprosy Control Unit at Rudrapur, Dehri on Sone, Rohtash, Bihar on the land donated by the State. It was specifically communicated that all the benefits admissible to voluntary organizations either from the State Government or from the Government of India were going to be extended to the Foundation and that after 5-7 years the Foundation should hand over the institution to the Government of Bihar along with its personnel, material and the establishment for complete maintenance. It also contemplated that the Organization should appoint the staff for project as per the prescribed norms and conditions of the State Government in force. Entire expenses for maintenance for a period of 5-7 years from the date of its establishment were required to be borne by the Foundation itself.

7. The petitioners thereafter were appointed by the Foundation on 20.12.1984. The appointment order issued by the Foundation stipulated that the petitioners would be eligible to draw salary as per the pay scale of Bihar Government. Further it was clearly stipulated that details of other benefits shall be given to them on successful completion of probation period. The petitioners



successfully completed their probation and finally the orders confirming their services in the Foundation on the post of non-medical staff were issued on 21.10.1985, 08.11.1985 and 11.01.1986 in respect of petitioners no. 3, 2 and 1 respectively. The order confirming the petitioners' services clearly stipulated as follows :

“Mr/Ms.Shall be governed by the Rules and Regulations of the Foundation and shall be entitled to all benefits as per the rules and regulations of the Foundation”.

8. After some time the Foundation disclosed its intention to close the Centre and in the circumstances other employees of the Foundation approached this Court by filing C.W.J.C. No. 506 of 1996 with grievance that the institution was not being taken over. This Court disposed off the writ petition vide order dated 05.08.1996 leaving it open to the State Government to examine the issue and take a decision depending upon the policy of the State with regard to acquisition of the Unit.

9. Under order dated 29.03.1999 the 20 bed Model Leprosy Centre which was established by the Foundation has been taken over by the State of Bihar along with Staff including the petitioner. Considering the said date of taking over by the State of Bihar to be the date on which the petitioners' have joined in the State of Bihar, they have been granted all benefits of a government servant under the State of Bihar.

10. The petitioners' case is that in light of the decision of the State Government dated 02.12.1982 (Annexure 2) they are entitled to count their earlier services i.e., from their initial appointment on probation in the Foundation i.e. from 20.12.1984 till 29.03.1999, when unit has been taken over, as service under the State Government. Accordingly, their length of service under the



Foundation should be calculated for grant of benefit of ACP and other benefits.

11. In respect of the said claim this Court would refer to clause 4 of the taking over order dated 29.03.1999. The same is being reproduced herein below :

“संस्थान के कार्मिकों को अधिग्रहण के पूर्व के अलावे यदि कोई हो तो भुगतान डेमियन फाउन्डेशन द्वारा ही किया जायेगा। डेमियन फाउन्डेशन द्वारा उनके सेवाकाल में भविष्यनिधि मद में दी गयी कटौती एवं उसपर देय लाभांश का भुगतान डेमियन फाउन्डेशन द्वारा ही किया जायेगा।”

12. The State Government seems to have clarified that prior to the date of taking over of the institution, all the dues were to be paid by the Foundation. From the order of taking over dated 29.03.1999, it is quite obvious that prior to the said date, the State Government does not recognize the services rendered by the petitioners as government service as the same had been rendered under a private non government organization, i.e., the Foundation. This position has also been accepted by the petitioners with open eyes.

13. Counsel for the petitioner has relied upon Annexure 2 that by virtue of the same they are entitled to be treated as being in service from the date of their initial appointment. Clause 2 and 3 of Anneuxre 2 are being referred to by the petitioners.

14. This Court finds that there is no such stipulation in the said two clauses referred to by the petitioner. Clause 2 merely contemplates that after 5-7 years of establishment of the institute the same shall be taken over by the State of Bihar “for complete maintenance”. Such a stipulation cannot be made the basis of claiming that services rendered under the Foundation a private non-government Organization was to be treated as government service. Clause 3



prescribes that the organization should appoint all staff of the Unit as per the prescribed norms and conditions of the State of Bihar in force. Thus Clause 3 merely refers to compliance with statutory provisions for the purpose of employment of workmen etc. and did not even suggest that the employees are to be in any manner equated with or given salary and benefits as per the employees of the Government of Bihar.

15. By the counter affidavit it is submitted that there is nothing on record to suggest that any representation has been made by the government of Bihar to the petitioners on the basis of which they can assert that they are entitled to be treated as employees in the service of the State Government for the period prior to take over i.e. on 29.03.1999.

16. Counsel for the petitioner has relied upon judgments in support of his claim in the case of **Direct Recruit II Engg. Officers' Asscn. V. State of Maharashtra** reported in **AIR 1990 SC 1607**. More specifically Para 44 of the said judgment. He also relies upon a recent decision of a single judge of this Court dated 19.03.2018 passed in C.W.J.C. No. 233 of 2016.

17. This Court finds that in both the said judgments the past service period which have been held to be recognizable for grant of other service benefits, is the length of service rendered under the State, but in different status being either adhoc or on daily wages. In this case the facts are different where petitioners are claiming reckoning of the period served in the employment of a private voluntary organization prior to take over of their services by the State of Bihar. Reliance placed on said judgments are not relevant in this case as it is trite law that a judgment can be a binding precedent for what it decides. Neither of the two judgments support the petitioners



claim that past service under a private non-Government organization prior to take over by the Government of Bihar can be reckoned as service under the Government for grant of ACP or other benefits.

18. Therefore the stand of the State Government that the petitioners can only be allowed to reckon their length of service, in the State Government, from the date of take over, i.e., 01.04.1999 cannot be faulted. The petitioners, have not been able to establish that there is any stipulation/decision of the government that period of service under the Foundation, i.e. a non-government voluntary organization, prior to take over by the Government could be considered to be government service for the purposes of grant of benefit of ACP or any other benefits.

19. The petitioners are not in a position to claim any benefit as being a government servants for the period prior to take over i.e., 01.04.1999. The impugned order dated 24.03.2009 requires no interference.

20. The writ petition is accordingly, dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.04.2018
Transmission Date	

