

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8547 of 2009

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SMT.PUNITA JAISWAL, WIFE OF SHRI RAJESH KUMAR ARYA, RESIDENT OF L-1/56, SRI KRISHNAPURI POLICE STATION SRI RKRISHNAPURI, PATNA.... Petitioner

Versus

1. THE STATE OF BIHAR
 2. THE DEPARTMENT OF HEALTH, GOVERNMENT OF BIHAR THROUGH ITS SECRETARY CUM COMMISSIONER, NEW SECRETARIAT, PATNA 1
 3. THE STATE HEALTH SOCIETY, BIHAR THROUGH ITS EXECUTIVE DIRECTOR, PARIVAR KALYAN BHAWAN, SHEIKHPURA, PATNA 1
 4. THE DISTRICT MAGISTRATE CUM CHAIRMAN, DISTRICT HEALTH SOCIETY, GOPALGANJ
 5. THE CIVIL SURGEON CUM MEMBER SECRETARY, DISTRICT HEALTH SOCIETY, GOPALGANJ
 6. SRI SUDHIR MAHTO, CIVIL SURGEON CUM MEMBER SECRETARY DISTRICT HEALTH SOCIETY, GOPALGANJ
 7. SRI VISHAL KUMAR SINGH, DISTRICT PROJECT MANAGER, DISTRICT HEALTH SOCIETY, GOPALGANJ
- Respondents
- =====

Appearance :

For the Petitioner : Ms. Sugandha Prasad, Advocate

For the Respondents : Mr. (SC18)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 03-04-2018

Heard learned counsel for the petitioner. None appears for the State.

2. Claiming her appointment as the District Project Manager (ASHA) in the District Health Society, Supaul, Gopalganj under the contract, the petitioner moved this Court by filing C.W.J.C.No. 5534 of 2009 raising a grievance that though she had joined and commenced discharge of duty by order dated 25.6.2008 her appointment has been kept in abeyance.

3. Petitioner's case was that once she has submitted her joining there is no question of keeping her appointment in



abeyance. It was only open to the respondents to terminate her engagement in terms of the contract. Taking note of this fact, the writ petition was disposed of vide order dated 30.4.2009 in the following manner:-

“This writ application is disposed of with the observation that if the petitioners had actually joined and commenced discharge of duty, the question of keeping their appointment in abeyance does not arise and the only recourse open to the respondents would be to proceed in terms of the contractual agreement. If the petitioners had only executed agreement but had not joined and commenced discharge of duties the status would be otherwise when the impugned order dated 25.6.2008 may require no interference.

No sooner that the petitioners present a copy of the present order before the respondents 5 and 6, as the case may be, appropriate decision is required to be taken forth with keeping in mind that the rights claimed by the petitioners are themselves of limited duration which cannot be frustrated by any inaction.”

4. It would be relevant to notice that the said order was passed within one year period and during subsistence of alleged contract, even as per the disputed claim of the petitioner that she was appointed on 17.6.2008. Pursuant to the aforesaid directions issued by this Court, the District Magistrate, Gopalganj has taken a decision in compliance of the said order passed by this Court. It is clear stand of the District Magistrate that though the petitioner appears to have submitted her joining on 23.6.2008 but there is nothing on record to show that agreement was ever executed in



relation to her contractual engagement. It has also been considered by the District Magistrate in his order dated 19.5.2009 bearing Memo no. 34 impugned in the writ petition that there is nothing on record to suggest that the petitioner had ever commenced her duty.

5. In view of the aforesaid findings, petitioner's case is covered by the decision on her writ petition bearing C.W.J.C.No. 5534 of 2009 disposed of vide order dated 30.4.2009 which has been taken note herein above to the extent that even if the petitioner has executed agreement but has not commenced discharge of duty, the order keeping her service in abeyance may not require interference.

6. Stand of the State Government in the counter affidavit is that the agreement paper was not signed and that the process of appointment was never completed which is disputed by the counsel for the petitioner. Even though no re-joinder has been filed to the counter affidavit of the State. In the circumstances, the position as emanating from the stand of the State in the counter affidavit will have to be considered as an admitted position.

7. In view of the fact that agreement was not executed and the petitioner has not commenced discharge of her duty, also considering the fact that though as per the case of the petitioner she had joined in June, 2008 which is disputed by the State



Government, one thing is quite evident that since the contractual appointment/engagement was for a year, its tenure lapsed in the June, 2009 itself.

8. In view of the aforesaid consideration, no relief can be granted to the writ petitioner in the instant proceeding.

9. The writ petition is accordingly dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
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