

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11587 of 2010

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Awdhesh Dwivedy S/O Late Dr. Jay Narayan Dwivedi R/O Village- Simri, P.O. +
P.S. - Simri, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, the State of Bihar, Patna.
3. The Joint Secretary of the State of Bihar, Patna.
4. The Director, Health Department (Deshi Chikitsa), Patna.
5. The Secretary, Health (Medical Education & Family Welfare & Deshi Chikitsa)
Department of the Government of Bihar, Patna.
6. The Principal, Rajkiya Shree Dhanwantri Ayurvedic College and Hospital,
Ahirauli, Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 28-06-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs:

*“ That this writ application is being filed
for issuance of any appropriate writ or writs, order
or orders, direction or directions, commanding to
the respondents and quash the order dated
10.09.2009 of the Gyapank No. 866 (Deshi Chikitsa)
issued by the Joint Secretary of the Government (Respondent no. 3) contained as Annexure-1 to this
petition and further be pleased to direct to
respondents to release the entire retiral dues and
other dues of the late employee father of petitioner
in favour of the petitioner and further be pleased to
direct to respondents to follow the similar order of
this Hon'ble Court in favour of the petitioner for
making a retiral dues and pensionary benefits of
deceased father of petitioner in favour of the*



petitioner and further be pleased to direct to respondents to dispose of the representation of petitioner contained as Annexure-7 and 8 to this petition and /or pass any order or orders as Your Lordships may deem fit and proper.”

3. The brief facts of the case relevant for the purpose of consideration of the relief sought in the present writ application is that the late father of the petitioner joined in a private Ayurvedic college sometime in the year 1976. Thereafter, the college was taken over by the State Government in terms of the Bihar Act of 1985 by which private medical colleges in the State of Bihar were taken over. From the records and as per the own showing of the petitioner, the service of his father was absorbed under the Government with effect from 01.06.1986. Thereafter, he continued on the post getting all the admissible emoluments till his superannuation on 10.04.1996. It appears that initially in terms of the report of the first Screening Committee for the purpose of determining the date of absorption of the service of similarly situated persons, the service of the late father of the petitioner was absorbed with effect from 01.06.1986, but subsequently, pursuant to another Screening Committee report, it was found that the initial appointment of the late father of the petitioner was not in accordance with law and accordingly, by the impugned order, his service has been deemed to have been terminated.



4. Learned counsel for the petitioner submitted that once a Screening Committee of the State had accepted and absorbed the service of his father, the matter could not have been reopened by a second Screening Committee. Further, reliance has been placed on a judgment of a Bench of this Court in C.W.J.C. No. 8213 of 2004 dated 18.10.2005 in the case of **Rakesh Kumar Pandey vs. The State of Bihar & Ors.**, by which the son of a similarly situated person had moved the Court and the termination order was quashed. Learned counsel submitted that before termination, a full fledged departmental proceeding is required which has not been done. It was further submitted that such order could not be passed as the father of the petitioner besides being dead was also no more an employee and the master-servant relationship had already ended.

5. Learned counsel for the State submitted that as facts cannot change, it is immaterial whether one Screening Committee or another Screening Committee comes to a finding but, on merits, it has been found that the very initial appointment of the late father of the petitioner by the Managing Committee, at the time when the college was private, was itself not in accordance with law and, thus, there cannot be any question of the Government absorbing such person and regularizing his services.

6. Having considered the facts and circumstances of the



case and submissions of learned counsel for the parties, the Court finds that the relief sought for is purely academic without having any consequential or substantial effect. First of all, the order has been passed against the late father of the petitioner, who is no more. Secondly, and more importantly, by the said order, no penal consequences arise, inasmuch as, the authorities have not directed for any recovery of any amount which has already been paid to the late father of the petitioner. The same includes salary and all other emoluments. The only factor which could have been relevant today was if the accepted period in Government service of the late father of the petitioner was eligible for pensionary benefits. From the own showing of the petitioner and which is an admitted position, even if as per the initial Screening Committee report in favour of the late father of the petitioner, his service was accepted with effect from 01.06.1986, he superannuated on 10.04.1996. Thus, the service was of about nine years ten months. In terms of the provision of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules'), a minimum of 10 years of service under the Government qualifies for pension. Thus, even if the Court were to interfere in the order of dismissal, since the late father of the petitioner or even the petitioner had never challenged the acceptance by the State of the service of the late father of the petitioner with effect from 01.06.1986, no further



benefit can accrue to the petitioner even if the order of termination is interfered by the Court. Thus, purely for academic reasons, when the employee himself is dead and the order impugned has no adverse effect on the petitioner, the Court does not feel inclined to go into the merits of the matter and pass any order.

7. Coming to the judgment in the case of **Rakesh Kumar Pandey** (supra), the Court would indicate that in the said case, the service of the father of the writ petitioner was in excess of 10 years and, thus, in such background, the Court had rightly gone into the merits of the matter as the same had repercussion relating to pension etc. However, since in the present case, even as per the admitted position by the petitioner himself, the service of the late father, otherwise also does not qualify for pension under the Rules.

8. For the reasons aforesaid, the writ petition stands disposed off.

(Ahsanuddin Amanullah, J.)

P. Kumar

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