

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3930 of 2016

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Arbind Chaudhary, Son of Late Ram Kishun Chaudhary, resident of Belda Toli (Loha Ka Pool), Police Station- Mehandiganj, Patna City, District- Patna, At present posted as Jeep Driver, Under In-Charge Medical Officer, Primary Health Centre, Bakhtiyarpur, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director -in- Chief, Health Services, Government of Bihar, Patna.
3. The Civil Surgeon -Cum- Chief Medical Officer, Patna, District Patna.
4. The In-Charge Medical Officer, Primary Health Centre, Bakhtiyarpur, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.

For the Respondent/s : Mr. Mithilesh Kr. Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-03-2018

Heard Mr. Pramod Mishra, learned counsel appearing for the petitioner and Mr. Mithilesh Kumar Upadhyay, learned Assisting Counsel to Government Pleader No.3 for the State.

The petitioner questions the order bearing Memo No.626(4) dated 19.6.2015 of the respondent Director-in-Chief, Health Services, Bihar, Patna impugned at Annexure 11, whereby the prayer of the petitioner to count his past service for the purpose of continuity has been rejected, inter alia, on grounds that the appointment of the petitioner on 8.10.1986 was made by Dr. A.A. Mallick whose appointments were declared illegal and thus the period spent under the said appointment could not be counted for the



purpose of continuity.

Facts are not in dispute. The father of the petitioner was in the services of the State Government who expired on 21.5.1984 and although the mother of the petitioner applied for compassionate appointment vide Annexure 1 as stated by the petitioner but the said prayer was not pursued and perhaps because such appointment was given to the petitioner by Dr. A.A. Mallick vide appointment order bearing Memo No.1988 dated 8.10.1986, a copy of which is placed at Annexure 12 to the reply to the counter affidavit filed today.

The appointments made by Dr. A.A. Mallick came under a scanner and in the light of the decision taken by the State Government that the service of the petitioner was also terminated along with several others vide order bearing Memo No.248 dated 18.5.1993 at Annexure 2. It is after approaching the authorities that the petitioner came before this Court in CWJC No.12091 of 2001 seeking to now invoke his prayer for compassionate appointment. A coordinate Bench of this Court taking note of the circumstances directed the competent authority to consider the grievance of the petitioner and pass appropriate orders on his prayer for compassionate appointment and it is in pursuance of the said order that the matter was considered by the District Level Compassionate Appointment Committee, Patna on 29.1.2007 and when vide



recommendation present at item no.21 the case of the petitioner was approved for compassionate appointment. A copy of the proceeding is present at Annexure 6 to the writ petition and it is in the light of the decision so taken that the petitioner was appointed on compassionate ground vide order bearing Memo No.3663 dated 25.5.2007. It is on appointment that the petitioner raised an issue of benefit of continuity of past service and not being provided that he came before this Court in CWJC No.10625 of 2010. A coordinate Bench of this Court vide order passed on 29.4.2014 placed at Annexure 9 disposed of the writ petition allowing liberty to the petitioner to raise his grievance before the competent authority. The representation of the petitioner has been rejected by the order impugned. Hence the writ petition.

I have heard learned counsel for the parties and I have perused the records.

The facts noted above are admitted and the only issue which falls for consideration is, whether the petitioner is entitled for counting of past service with effect from 8.10.1986 vide appointment order issued by Dr. A.A. Mallick.

Having heard learned counsel for the parties and considering that there is no dispute that the appointments made by Dr. A.A. Mallick were declared illegal, any direction by this Court



in granting benefit of the said period to the petitioner would be a perpetuation of illegality and since admittedly these appointments was illegal, it was *void ab-initio* and thus the period whatsoever rendered cannot enure to the benefit of the appointee for any purpose including continuity.

For the reasons discussed as well as taking note of the reasons assigned by the respondent no.2, Director-in-Chief, Health Services to refuse the prayer of the petitioner, I find no ground for grant of indulgence to the relief prayed.

The writ petition is dismissed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-03-2018
Transmission Date	NA

