

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17231 of 2017

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Ajay Kumar, Son of Late Janardan Prasad Sharma, resident of Village- Paleya,
Police Station- Makhdumpur in the District of Jehanabad.

.... Petitioner/s

Versus

1. The Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director-in- Chief (Admn.), Health Services, Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya-cum- First Appellate Authority under Bihar Right to Public Grievance Redressal Act, 2015.
4. The Regional Additional Director, Health Services, Magadh Division, Gaya.
5. The District Magistrate-cum- Collector, Gaya.
6. The District Public Grievance Redressal Officer, Gaya.
7. The Civil Surgeon-cum- Chief Medical Officer, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr. Ajay Behari Sinha - GA-8

Mr. Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 14-05-2018

The present writ petition has been filed for quashing the order, contained in Memo No. 3759, dated 6.11.2017 to the extent that the petitioner has been transferred from the office of Civil Surgeon-cum- Chief Medical Officer, Gaya to Prabhawati Hospital, Gaya as also the order passed by the respondent no.4 dated 24.10.2017 whereby and whereunder the Civil Surgeon has been directed to transfer the petitioner from the office of the Civil Surgeon-cum- Chief Medical Officer, Gaya.

2. The brief facts of the case are that the petitioner was initially appointed as Clerk under the office of the Civil Surgeon-cum- Chief Medical Officer, Gaya in the year 1976 on compassionate ground. The petitioner has been discharging his duty to the



satisfaction of all concerned and has also been granted the benefits of 1st, 2nd and 3rd A.C.P. The petitioner has also passed Accounts Examination in the year 1988. The petitioner was transferred from one office to the other on number of occasions and finally by an order of the Civil Surgeon-cum- Chief Medical Officer, Gaya dated 06.11.2014, the petitioner was relieved by the Incharge Medical Officer, PHC, Mohanpur Block, Gaya for submitting his joining in the office of Civil Surgeon-cum- Chief Medical Officer, Gaya, where he joined on 12.11.2014 and, in fact, the said order of the Civil Surgeon-cum- Chief Medical Officer, Gaya dated 06.11.2014 was also approved by the Regional Deputy Director, Health Services, Magadh Division, Gaya. While the petitioner was working in the office of the Civil Surgeon-cum- Chief Medical Officer, Gaya peacefully, all of a sudden the order dated 20.8.2015 was issued under the signature of the Director-in-Chief, Health Services, Patna, Bihar, by which all the transfers/postings made by the Civil Surgeon-cum- Chief Medical Officer, Gaya w.e.f. August, 2014 till the said date were cancelled. Accordingly, the petitioner, vide Memo dated 28.12.2015 was again posted as Clerk at the Additional Primary Health Centre, Dangra under Mohanpur Block in the District of Gaya, the place where the petitioner had then joined on 29.12.2015.

3. The further case of the petitioner is that the petitioner had filed a writ petition bearing CWJC No. 3589 of 2016, which was



disposed of by an order dated 14.2.2017 passed by this Court with a direction to the Civil Surgeon-cum- Chief Medical Officer, Gaya to prepare and notify the final gradation list within one month. Thereafter, the petitioner was posted as Head clerk in the office of Civil Surgeon-cum- Chief Medical Officer, Gaya, vide Memo dated 7.4.2017. However, one Shashi Bhushan filed a complaint before the District Public Grievance Redressal Officer, Gaya against the Head Clerk/ Clerks working in the office of Civil Surgeon-cum- Chief Medical Officer, Gaya for their transfer, however, the same was rejected on the ground of jurisdiction. The said complainant, namely, Shashi Bhushan, then moved before the respondent no.4 who disposed of the complaint by the impugned order dated 23.10.2017 directing the Civil Surgeon-cum- Chief Medical Officer, Gaya to transfer the petitioner as well as other clerks posted in the office of Civil Surgeon to any other office/ place. Accordingly, the petitioner was transferred from the office of Civil Surgeon-cum- Chief Medical Officer, Gaya to Prabhawati Hospital, Gaya by the impugned order dated 6.11.2017.

4. The learned counsel for the petitioner has submitted that the matters, pertaining to service matter of employees, are not within the domain of Bihar Right to Public Grievance Redressal Act, 2015, as such the complaint pertaining to the petitioner and another could not have been entertained by the District Public Grievance Redressal Officer, Gaya and the said authority had rightly refused to



entertain the complaint. However, on an appeal being filed, the first appellate authority i.e. the Divisional Commissioner, Magadh Division, Gaya has entertained the same and by the impugned order dated 23.10.2017, without seeking any response from the petitioner herein regarding veracity of the factum of complaint and behind the back of the petitioner, has passed an ex-parte order dated 23.10.2017 whereby and whereunder the Civil Surgeon, Gaya has been directed to transfer the petitioner as well as the other clerks posted in the office of the Civil Surgeon-cum- Chief Medical Officer, Gaya to any other office/place outside the said office, on the ground that the petitioner has been posted in the office of Civil Surgeon office/ premises for about 11 ½ years.

5. The learned counsel for the petitioner has submitted that firstly, the finding of the respondent no.4 is wrong and secondly, the respondent no.4 could not have dealt with the service matter of the employees in view of the bar under the Bihar Right to Public Grievances Redressal Act, 2015 and further since the impugned order of transfer dated 23.11.2017 has been solely passed on the basis and in compliance of the order dated 24.10.2017 passed by the respondent no.4, the same is fit to be set aside.

6. The learned counsel for the State, referring to paragraph No. 4 of the counter affidavit filed on behalf of the respondents, has submitted that the transfer of the petitioner has been



made in light of the decision taken by the District Establishment Committee on the ground of administrative exigency, hence the same cannot be faulted with and the present writ petition is fit to be dismissed.

7. At this juncture itself, it would be relevant to state that the said submission made on behalf of the respondents is wrong, erroneous and fit to be rejected at the outset, firstly on the ground that no decision of the District Establishment Committee has been brought on record and secondly, the order of transfer dated 6.11.2017 cannot be improved by way of the submission made in the counter affidavit since the same nowhere reflects that the same has been passed in light of the decision taken by the District Establishment Committee on the ground of administrative exigency whereas on the contrary the same only states that the transfers are being made in compliance of the order dated 24.10.2017 passed by the first appellate authority i.e. the Divisional Commissioner, Magadh Division, Gaya.

8. I have heard the learned counsel for the parties and have gone through the records of the present case and I find that the very basis of the transfer of the petitioner from the office of the Civil Surgeon-cum- Chief Medical Officer, Gaya to Prabhawati Hospital, Gaya is not correct inasmuch as firstly, the observation made by the first appellate authority in its order dated 24.10.2017 is factually incorrect and secondly the said first appellate authority could not have



entertained the complaint pertaining to the service matter of the employees of the State Government as is clear from the definition of complaint mentioned in Section 2(a) of the Bihar Right to Public Grievances Redressal Act, 2015. Further, I find that the first appellate authority could not have passed any adverse order behind the back of the petitioner, to his detriment, without giving an opportunity of hearing to the petitioner herein. Hence, the said ex parte order passed by the first appellate authority against the petitioner herein is in complete violation of the principles of natural justice, hence the same is set aside and quashed.

9. Since, the order of transfer of the petitioner dated 6.11.2017 has been passed solely on the basis of the appellate order dated 24.10.2017 passed by the first appellate authority, the same is also bound to fall and is, accordingly, set aside as far as the petitioner herein is concerned.

10. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.06.2018
Transmission Date	

