

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2182 of 2016

In

Civil Writ Jurisdiction Case No.7456 of 2003

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1. Bipin Bihari Chaubey son of Late Ram Bachan Chaubey, resident of village& p.o Ahirauli, Disttict Buxar.
 2. Krishna Bihari prasad, son if Nand Bihari Lal,

... .. Appellants

Versus

1. The State of Bihar.
2. The Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar Patna.
3. The Additional Secretary, Department of Health, Medical Education and Family welfare, Government of Bihar, Patna
4. The Deputy secretary, Department of Health, Medical Education Government of Bihar, Patna,
5. The Director, Deshi Chikitsa, Government of Bihar Patna.
6. The Secretary, Finance, Government of Bihar, Patna.
7. The Cabinet Secretary ,Government of Bihar old Secretariat, Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Kunal Tiwary

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 10-01-2018

Heard counsel for the appellants.

Case of these appellants has been considered by the learned single Judge in paragraph 330 onwards of the writ application. Since it is a detailed consideration of the cases of these appellants, the same is reproduced:

“330. The three petitioners, namely, Bipin Bihari Chaubey, Krishna Bihari Prasad and Dharmjay Prasad Lal, in this writ application have assailed an order dated 18.11.2002, whereby and whereunder their services were terminated by the



State Government. According to the petitioners, petitioner no.1 Bipin Bihari Chaubey was appointed on the post of Laboratory Technician on 1.1.1982 and his such appointment made by the Secretary was made permanent by the Governing Body in Resolution No.7 dated 16.1.1982.

331. Similarly, petitioner no.2 has claimed that his appointment was made in the College under the order of the Secretary of the Governing Body on 26.2.1982 on the post of Technical Assistant and the Governing Body in the meeting held on 14.9.1985 had made his services permanent on the post of Technical Assistant.

332. Petitioner no.3 Dharmjay Prasad Lal claims to have been appointed on the post of Laboratory Assistant in the Department of Sharir Rachana (Anatomy) under the order of the Secretary to the College dated 30.1.1982 and he too claims to have been made permanent in the meeting of the Governing Body held on 14.9.1985.

333. Thus, all the petitioners claim to be working in the College on the cut-off date of takeover i.e. 1.6.1986 on their respective post of Laboratory Technician, Technical Assistant and Lab. Assistant. According to the petitioners, their services after the takeover of the College was not taken over even as an ad hoc employees, whereafter they had moved this Court in C.W.J.C.Nos. 929/1988 and 2963/1988 and this Court had directed the State Government to constitute the Committee to enquire into the allegation of the petitioners and take a decision for their absorption if they are found to have been validly and genuinely appointed.

334. According to the petitioners, the Committee constituted by the State Government had found them to be not validly appointed as there was no sanctioned post available for them and they were also not having the prescribed qualification. Thereafter they had moved again this Court in C.W.J.C.No. 5674/1996, which was disposed of by an order dated 3.9.1997 with a direction to the respondents to give an



opportunity to the petitioners to approach the Secretary of the Department by demonstrating that they had the qualification and the post on which they claim their appointment and absorption was sanctioned. It is the case of the petitioners that thereafter they were absorbed on the post of Laboratory Technician, Technical Assistant and Lab. Assistant by an order dated 17.12.1997 but all of a sudden their services were terminated again by the impugned order dated 18.11.2002 without complying the principles of natural justice.

335. Mr. Ashok Kumar Singh, learned Senior counsel appearing on behalf of the petitioners, had submitted that since an interim order was already passed by this Court in this case on 22.8.2003 staying operation of their termination, the petitioners will be deemed to be continuing in service and as such, this Court is not required to decide anything else except validity of their order of termination, inasmuch as they have already stood absorbed in the services of the College.

336. This Court would find it difficult to accept such submission for a simple reason that all such Committee's reports and absorption were set at naught and the direction was given for constituting a fresh Screening Committee and the State Government to take a decision on the basis of the recommendation of the Screening Committee. Thereafter when the order removing 223 persons were passed on 29.8.2003 the issue had again been decided by this Court in the case of Dr. Satyadeo Pandey (supra) remitting the matter back for consideration of absorption. As a matter of fact on account of the interim order passed in this case the decision could not be taken in case of petitioners.

337. In this case a counter affidavit also has been filed, wherein it has been stated that the absorption order of the petitioner was itself a fraudulent order which was never passed by the State Government. On the other hand, the report of the Screening Committee has been placed on record to show that the Screening Committee had found appointment of all the



three petitioners to be wholly illegal and against un-sanctioned post and therefore, the claim of their absorption was itself unsustainable. Additionally it is also stated that the petitioners were also given a show cause notice enclosing the copy of the screening report but the petitioners had never filed their show cause reply, which went to show that they had admitted the allegations made against them relating to non-availability of sanctioned post as well as lack of qualification for the post on which they were appointed.

338. This Court on perusal of the counter affidavit, averments whereof have not been controverted by the petitioners despite service of copy on them, would find that petitioner no.1 had passed his Matriculation examination in 1974 and Intermediate in Science in 1991 and therefore, as on the date of his appointment he was simply Matriculate on the basis of which he could not have been appointed on the post of Laboratory Technician. His passing the Intermediate Examination in the year 1991 will also make no difference and therefore, this Court would find that when petitioner no.1 alike petitioners no. 2 and 3 are also not working in the College even after passing of the interim order staying operation of their termination order, he would hardly be entitled for any relief, much less for quashing of the order of his termination.

339. The case of petitioner no.2 is still worse, inasmuch as he was appointed on the post of Technical Assistant, a post which has never been there in the CCIM norms. Petitioner no.2 in fact is only an Intermediate of Arts and therefore, his claim of appointment on the post of Technical Assistant on 25.2.1982 and the alleged approval of his appointment by the Governing Body on 14.9.1985 will also have no meaning in the eye of law, specially when after 25.4.1984 the proceedings of the Governing Body were manipulated which have also been not found to be worth any reliance in the judgment of this Court in the case of Dr. Satyadeo Pandey (supra).



340. Finally, as with regard to the case of petitioner no.3 claiming appointment and absorption on the post of Laboratory Assistant in the department of Sharir Rachana (Anatomy) it is found that his appointment made by the Secretary of the College on 30.1.1982 was in fact never approved even by the Governing Body till 26.3.1984 and on 14.9.1985 his services were sought to be made permanent on the post of Laboratory Assistant. This petitioner again has no qualification for the post, inasmuch as he is only Matriculate of the year 1974 and therefore, this Court would not find any difficulty in either approving the report of the Screening Committee which was made the basis for termination of the service of the petitioner and that too after following the principles of natural justice by way of show cause notice.

341. This Court in order to be sure that whether the petitioner's case would require reconsideration had specifically asked the learned Senior counsel appearing for the petitioners as to whether the petitioners were still continuing in service but Mr. Singh very fairly had said that he was not aware of the present status of the petitioner and in that background this Court had directed the respondents to file supplementary counter affidavit which was sworn and filed on 30.9.2015 by none-else but the Director, Indigenous System of Medicine, himself wherein it was clearly stated that all the three petitioners were not in service of the College as per written information given to him by the Principal of the College.

342. Thus, if the petitioners even after the interim order of stay of their order of termination have not been in service for more than 12 to 13 years, there would be no question of issuing any direction for their absorption. It appears to the Court that the petitioners have abandoned their claim.

343. That being so, this writ application must be and is hereby dismissed.”



Submission of the counsel for the appellants is that these appellants had been earlier absorbed by virtue of notifications dated 17.12.1997 and 21.01.1998. However, they stood terminated by an order dated 18.11.2002, which in turn was challenged in C.W.J.C. No. 7456 of 2003 and an interim order of protection by staying the order was passed on 22.08.2003, therefore, they would be deemed to be in service and not allowing these appellants to work after the order of termination is also contemptuous.

With due respect to the counsel for the appellants, the effect of the order of absorption, the termination as well as the interim order passed by the writ Court has been taken note of by the learned single Judge in the above mentioned paragraphs. Even at the time of final adjudication, it has been found that these appellants never remained in service after their removal and they have not worked under the authorities or the college in question for more than 12-13 years.

If this be the position, after their removal in the year 2002, there was no occasion for the learned single Judge to order to consider their regularization or absorption when the findings are that their appointments had been made without them having requisite qualification or the relevant post being available as such.



The decision of the learned single Judge does not warrant any interference. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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