

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15067 of 2017

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Braham Prakash, Son of Om Prakash Varshney, resident of village + P.O. Kujapi,
P.S- Chandauti, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director-in-Chief (Admn), Health Services, Govt. of Bihar, Patna.
4. The Divisional Commissioner Magadh Division, Gaya.
5. The Regional Additional Director, Health Services, Magadh Division, Gaya.
6. The Civil Surgeon cum Chief Medical Officer, Gaya.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Kanhaiya Pandey
For the Respondent/s : Mr. NAGENDRA PD. YADAV-SC23

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 07-03-2018

The writ petitioner seeks to challenge the order of his transfer dated 5.10.2017 passed by the respondent no.6 whereby and whereunder the petitioner has been transferred from the office of Civil Surgeon, Gaya to the Additional Primary Health Centre, Kavar Konch, on the pretext of the order passed by the Divisional Commissioner, Magadh Division, Gaya-cum- Appellate authority under the Public Grievance Redressal Act, which is dated 16.9.2017.

2. The learned counsel for the petitioner submits that the matters pertaining to service matter of employees are not within the



domain of Bihar Right to Public Grievance Redressal Act,, 2015 and as such the complaint pertaining to the petitioner could not have been entertained by the District Public Grievance Redressal Officer, Gaya and the said authority has rightly by an order dated 15.5.2017 restrained from entertaining such complaint. However, on an appeal, the first appellate authority i.e. the Divisional Commissioner, Magadh Division, Gaya has entertained the appeal and by an order dated 16.9.2017, without seeking any response from the petitioner herein regarding the veracity of the complaint and that too behind the back of the petitioner, has passed the ex parte order dated 16.9.2017 whereby and whereunder it has been observed that since the petitioner is posted at the office of Civil Surgeon, Gaya since five years, though, there is no concurrent evidence of any misconduct against the petitioner, it would be in the fitness of things to transfer the petitioner from the said place of posting i.e. Gaya.

3. It is further submitted by the learned counsel for the petitioner that the petitioner has been posted at Gaya for about a year and the fact stated by the first appellate authority, as aforesaid, is also incorrect, which has not been disputed by the respondents. It is thus submitted that in view of the transfer of the petitioner being purely based on the order passed by the Divisional Commissioner, the transfer order itself is perverse and is fit to be set aside.



4. Per contra, the learned counsel for the State has contended that the order of the first appellate authority dated 16.9.2017 is self-explanatory and on the said basis, the petitioner was transferred from Gaya to Konch.

5. I have heard the learned counsel for the parties and have gone through the records of the present case and find that the very basis of the transfer of the petitioner from the office of Civil Surgeon, Gaya to the office of Additional Primary Health Centre, Kavar, Konch, is not correct in as much as the observation made by the first appellate authority in its order is factually incorrect. Nonetheless, the said 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 Grievance 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 adverse order passed by the Appellate authority, as against the petitioner herein, is in completely violation of the principles of natural justice. Nonetheless, the facts remain that even the factual discussion about posting of the petitioner at Gaya is incorrect and thus, the entire order smacks of prejudice.



6. In view of the aforesaid, I find that the order dated 5.10.2017 by which the petitioner has been transferred from Gaya to Konch is not sustainable in the eye of law, hence the same is quashed.

7. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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