

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.546 of 2014

IN

Civil Writ Jurisdiction Case No. 365 of 2014

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Kumod Kumar, Son of Sri Ram Jeewan Prasad, resident of South Chandmari Road,
P.S. - Kankarbagh, Patna – 20, at present posted as Operation Theatre Assistant,
Labour Room Operation Theatre, Patna Medical College Hospital, Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The Commissioner and Secretary, Health Medical Education and Family Welfare
Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Superintendent, Patna Medical College Hospital, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi, Adv.

Mr. Siddharth Harsh, Adv.

For the State : Mr. Rishi Raj Sinha, S.C.-19

Mr. Akhilesh Kr. Sinha, A.C. to S.C.-19

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 02-02-2018

Heard learned Counsel for the appellant and Counsel
for the State.



2. This Court is not impressed or enthused by the arguments made by the Counsel to interfere with the finding in decision dated 10.01.2014, passed by the learned Single Judge, who, in turn, refused to interfere with the speaking order passed by the Director-in-Chief, Health Services, Govt. of Bihar, on the issue of promotion from the post of Dressers to the post of O.T. Assistant. This is so because neither the order of the Director-in-Chief nor the order of the learned Single Judge can be said to be irrational or erroneous.

3. One aspect, however, pointed by the Counsel that if it is an accepted position, which this Court does not certify, that the petitioner/appellant as a Dresser was made to work as an O.T. Assistant after he was made to take charge on retirement of the then incumbent and since the post of O.T. Assistant is a higher responsibility, whether the case for consideration of compensation in terms of Rule 89 read with Rule 103 of the Bihar Service Conduct can come into play.

4. Since this aspect of the matter was not touched upon by the learned Single Judge, this Court does give liberty to the petitioner/appellant to move appropriate authority with supporting material and evidence to consider such a request and to pass an appropriate order with regard to the entitlement of the allowance



under the two Rules noted above.

5. If an application is filed, the concerned authority will be duty bound to take a decision preferably within a period of three months from the date of filing of such application.

6. L.P.A. stands allowed to the extent indicated above. Other issues stand closed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Praveen-II/-

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