

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15556 of 2012

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Ram Uday Prasad, Son of Ramashish Singh, Resident of Village- Ark Dhibaria,
P.S.- Tekari, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Regional Deputy Director, Health Services, Magadh Division, Gaya.
5. The Civil Surgeon-cum-Chief Medical Officer, Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Manish Kumar, GP 4
Mr. Manoj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-09-2018

Heard learned counsel for the parties.

The petitioner is aggrieved by the order bearing No. 2067 dated 01.12.2011 in so far as it denies back wages to the petitioner for the period he remained out of service i.e in between the date of termination on 12.06.2003 until his reemployment on 01.12.2011.

The pleadings on record would confirm that the petitioner was engaged on daily wage basis against the post of Typist Clerk on 08.12.1983 and was absorbed subsequently on 18.04.1984 which absorption was doubted as not being in accordance with the prescribed procedure leading to termination on 12.06.2003. The petitioner approached this Court in C.W.J.C. No. 5423 of 2006. A



coordinate bench of this Court vide order passed on 29.10.2009 remanded the matter for fresh consideration by the Director in Chief, Health Services in the light of the observations of the Supreme Court in the case of **State of Karnataka versus Uma Devi** since reported in **(2006) 4 SCC 1** more particularly paragraph 44 thereof. The matter was examined and taking note of the past service of the petitioner as also the manner in which it was earlier regularized that bearing note of the stipulations present in paragraph 44 of the judgment and also the fact that in between the absorption of the petitioner on 18.01.1984 until his termination on 12.06.2003 the petitioner had rendered more than 18 years of service that the Department decided to reemploy the petitioner and also to give him benefit of continuity for the purpose of superannuation benefit, however, since the earlier absorption according to the respondents, was not in accordance with the prescribed procedure, that the benefit of back wages was denied which has aggrieved the petitioner to come before this Court.

Having heard the learned counsel for the parties and considering the circumstances in which the termination took place inter alia on grounds that the earlier absorption in the year 1984 was not in accordance with law, in my opinion it is applying equitable principles as also taking note of the fact that the petitioner had rendered 18 years of service since after absorption that the Director in



Chief was persuaded to reemploy him applying the stipulation present on paragraph 44 of the judgment in **Uma Devi** (supra) but definitely since the earlier absorption was not found in accordance with the procedure, the denial of past wages cannot be faulted with. It is not a case of substantive appointment nor a case where the termination was found illegal rather it is on equitable principles of serving the Department of 18 years that a decision was taken for reemployment while providing the benefit of continuity of service. In my opinion in the circumstances noted, it is best that the petitioner could have got at the hands of the respondents and his claim for past wages where his earlier absorption itself was found irregular, is unacceptable. No cause for indulgence is made out in the order impugned in so far as it denies backwages to the petitioner.

The writ petition is disposed of.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.09.2018
Transmission Date	NA

