

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2332 of 2017

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Ashwani Kumar Jha, Son of Sri Nav Kant Jha, Resident of Village and Post- Garh Baruari, P.S. and District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director in Chief, Health Services, Health Department, Government of Bihar, Patna.
4. The Regional Additional Director, Health Services, Koshi Division, Saharsa.
5. The District Magistrate, Supaul.
6. The Civil Surgeon cum Chief Medical Officer, Supaul.
7. The Civil Surgeon cum Chief Medical Officer, Saharsa.
8. The Additional Chief Medical Officer, Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.C. Jha, Advocate
For the Respondent/s : Mr. Birju Prasad-GP13
Mr. Ravi Kumar, AC to GP13
Mr. Amresh, AC to GP13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-10-2018

Heard the parties.

In the present writ petition, the petitioner is challenging the order vide memo no. 1436 dated 27.10.2016 (Annexure -1) issued by the Civil Surgeon-cum-Chief Medical Officer, Supaul, whereby and whereunder he has been reverted from Class III post to Class IV post having stated that his promotion was illegal and cannot be allowed to sustain in view of the order passed in L.P.A. No. 448 of 2005 (Arvind Kumar Yadav Vs. State of Bihar) and its analogous appeals.



The short facts of this case is that the petitioner was initially appointed as Daily Wages Employee to work as Inculator vide Memo No. 1134 dated 15.09.1984 issued under the signature of then Civil Surgeon-Cum-Chief Medical Officer, Saharsa and he was directed to join the Primary Health Centre, Navhatta, Saharsa where he joined, started working as daily wage employee.

The Civil Surgeon-cum-Chief Medical Officer, Saharsa vide Memo No. 652 dated 07.03.1986 directed to Incharge Medical Officer, Raghapur Block that if the works are available for daily wages employee, in that case, directed for appointment of Mr. Jha on proper place whereafter, the service of petitioner was regularized as Pak Sevak (Cook) in the light of the direction issued by the Health Directorate, Bihar, Patna vide Memo No. 379 dated 30.03.1987 issued by Civil Surgeon-Cum-Chief Medical Officer, Saharsa. The order itself reflects that he was regularized in the scale of Rs. 350-3-380-4-400 and in pursuance thereof the petitioner gave his joining on 30.3.1987 before the Incharge Medical Officer, Simraha Hospital (Saharsa), which was duly accepted. While he was discharging duty of Pak Sevak, Civil Surgeon-cum-Chief Medical Officer, Saharsa issued notice whereby applications were invited from interested persons for



promotion to Class III posts from the eligible candidate having requisite qualification. As the petitioner was holding requisite qualification he also applied and whereafter the petitioner received a letter issued by the Civil Surgeon-cum-Chief Medical Officer, Saharsa vide letter bearing Memo No. 147 dated 19.01.1988 whereby the petitioner was directed to be remain present alongwith educational certificate and caste certificate on 27.01.1988 failing which candidature of the petitioner would be treated to have been cancelled.

Again vide letter bearing Memo No. 734 dated 15.03.1988 petitioner was directed to appear in the office of Civil Surgeon-cum Chief Medical Officer, Saharsa on 23.03.1988 alongwith educational certificate and on that date the petitioner appeared before the interview Board which was conducted by the Establishment Committee. He produced all the credential with respect to educational qualification. After successful completion in the interview the petitioner was promoted to the vacant post of Class III in Additional Primary Health Centre, Bhaptiyahi (Saharsa), where he had given his joining on 26.03.1988. He continued to discharge the duty ultimately, he has been demoted to Class IV post on account of the order passed in L.P.A. No. 448 of 2005 in which the Court has taken a serious view of



matter that Anil Kumar Yadav and others were promoted from technical to non-technical posts that too by a committee which was not constituted properly.

In the counter affidavit the State has not denied the fact that the petitioner had/has requisite qualification as well as he had appeared before the properly constituted Establishment Committee where he was declared successful and only thereafter he was promoted. As per counter affidavit two maladies have been found, one is that he was promoted within one year of his regularization in service and another is that he was promoted without observance of roster clearance.

Learned counsel for the petitioner submits that L.P.A. order does not apply as in that case the Court has interfered in the order of promotion on the ground that they were working on technical Class –IV posts and they were promoted to non-technical of Class III posts, Court has said that such promotion is completely vitiated on account of wild action. Reasons have been assigned that the person appointed on technical posts cannot be promoted to the non-technical post inasmuch as interview was not conducted by properly constituted interview Board but in the present case the fallacies are that, within one year he has given acceleration by granting promotion as well as



non observance of the roster point but the order of Division Bench as aforesaid did not accede the request of Anil Kumar Yadav to allow him to continue on the promoted post but the Court has given direction which is as follows:

“So far Class IV employees are concerned, if there are vacancies then their case should also be considered in the same manner. The authorities should consider and take decision expeditiously preferably within four months from the date of receipt/production of a copy of this order”

So meaning thereby if the vacancies were available their cases should be considered and in the event of success the date of promotion should be readjusted.

In the present case also the justice can be done in the manner that the respondent authority should consider the case of the petitioner for promotion after competition of three years subject to condition that respondent would embark upon necessary exercise to find out the availability of unreserved category of post in Class III category in the event of availability of the same the date of promotion of petitioner will be adjusted.

All the process should be completed within a period of four months from the date of receipt/production of a copy of this order.

Accordingly, the impugned order dated 27.10.2016 is set



aside and this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Vinay/Sunny

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.20.12018
Transmission Date	NA

