

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7804 of 2014

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1. Mahendra Prasad Singh son of Sheo Prasad Singh, retired as officiating Mediaman, Department of Clinical Pathology Anugrah Narayan Magadh Medical College & Hospital, Gaya Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Health and Family Welfare Department, Govt. of Bihar, Patna
2. The Secretary, Health and Family Welfare Department, Govt. of Bihar, Patna
3. The Deputy Secretary, Health and Family Welfare Department, Govt. of Bihar, Patna
4. The Director in Chief, Health Services, Bihar, Patna
5. The Superintendent, Anugrah Narayan Medical College & Hospital, Gaya
6. The Accountant General, Bihar, Patna, Birchand Patel Path, Patna
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar
For the Respondent/s : Mr. SC-15

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
CAV JUDGMENT
Date: 5-04-2018

Heard both sides.

The petitioner in this writ petition seeks following reliefs:-

“(i) For quashing the order dated 04.04.2007 contained in letter No. 8/A-2-2-11/05-183(8) issued under the signature of Deputy Secretary, department of Health & Family welfare, Government of Bihar, Patna and its consequent order dated 25.04.2007 contained in memo No. 916 issued under the signature of the then Superintendent, Anugrah Narayan Magadh Medical College, Gaya.

(ii) For quashing the letter dated 09.04.1990 contained in memo No. 558/90 as valid by which the petitioner has been given promotion upon the post of Mediaman from Lab boy and also consequential letter dated 30.05.1990 contained in memo No. 945/50 by which petitioner's promotion order was confirmed by the establishment committee of the College”.

The relevant and requisite facts of the case is that the petitioner was initially appointed in Anugrah Narayan Magadh Medical College & Hospital, Gaya (hereinafter referred to as the College) on the post of Lab-boy subject to confirmation by the committee on 30.10.1972 as contained in memo No. 2908 (Annexure-



1). The Superintendent of College issued letter dated 09.04.1990 contained in memo No. 558 of 1990 by which the petitioner was promoted to the post of Mediaman in the pay scale of Rs. 950-20-1150-25-1500/- with effect from the date of issuance of letter (Annexure-2). Vide letter No. 945/1990 dated 30.05.1990 the establishment committee of the College resolved to confirm the promotion of the petitioner on the post of Mediaman. The petitioner worked on the post of Mediaman till 25.04.2007. The Director-in-Chief, Health Services, Government of Bihar, Patna on 02.08.2006 issued show cause as contained in memo No. 470(8) (Annexure-4) to the petitioner and others stating that they have been illegally appointed/ promoted. The petitioner filed his show cause stating that he was promoted to the post of Mediaman as the petitioner has requisite qualification for promotion to the post of Mediaman from the post of Lab-boy but on 04.04.2007 the Deputy Secretary, department of Health and Family Welfare issued letter No. 183(8) (Annexure-6) addressed to the Superintendent of College directing him to terminate the service of nine persons working in the said college on different posts as their appointment and promotions were made without following the relevant rules. In pursuance of the direction of the Deputy Secretary, the Superintendent of College issued letter No. 116 dated 25.04.2007 canceling the promotion of petitioner and two others and ordered for recovery of salary (Annexure-7). The petitioner filed representation before the competent authority and also wrote letter for review of the order but no order was passed thereafter the petitioner filed this writ petition.

The learned counsel for the petitioner submits that petitioner was initially appointed on the post of Lab-boy by the managing committee of the College. The service of the petitioner was confirmed after the College was taken over by the Government of Bihar. In the year 1990 the Superintendent of College promoted the



petitioner to the post of Mediaman, a class-III post, from the post of Lab-boy, a class-IV post. The establishment committee of the College also confirmed the promotion of the petitioner. It is submitted that Director-in-Chief, Health Services issued show cause to nine persons on the basis of audit report and in pursuance thereof the petitioner has been demoted to the post of Lab-boy. The learned counsel for the petitioner further submits that no departmental proceeding was held and no show cause notice was given to the petitioner. The petitioner and two others were demoted to the post of their initial appointment without initiating any departmental proceeding. It is further submitted that initially nine persons were asked to show cause by the Director-in-Chief, on the basis of audit report that their appointment/promotion were illegal, and consequent thereupon six persons were dismissed from service and three persons including the petitioner were demoted to the their post of initial appointment. It is submitted that one Jitendra Prasad Singh, one of the aggrieved persons, who was dismissed from service filed CWJC No. 7049 of 2007 and a single bench of this court vide order dated 22.04.2011 found that appointment of Jitendra Prasad Singh was temporary and thereafter he was regularized in service by the Government orders dated 18.05.1989 and 31.05.1989 and the Superintendent of College was directed to regularize his service and accordingly he was paid wages. It is further submitted that Narendra Singh and Pramod Kumar also filed CWJC No. 9095 of 2007 and 7148 of 2007 and this court vide order dated 16.05.2011 allowed the writ petitions, quashing their order of termination from service on the ground of illegality. It is submitted that before cancelling the promotion of the petitioner the petitioner was not noticed and no departmental proceeding was held. A division bench of this court in the case of **Ram Krishna Dubey v. the State of Bihar & Ors, reported in 2008 (1) PLJR 841** held that service of a permanent employee can only be terminated by following



the procedure laid in Rules for removal of a permanent employee and that procedure must be accorded under Article 311(2) of the Constitution of India. There being no misconduct on the part of the petitioner-appellant and there being no allegation or finding by any competent authority about any misconduct on the part of incumbent in securing appointment, the termination order of permanent employee as has been made in the case cannot be sustained. It is further submitted that petitioner has already retired from service on 31.01.2014 and the order of demotion (Annexur-7) is fit to be set aside.

The State respondents have filed counter affidavit. It is submitted on behalf of the State that petitioner was appointed by the Secretary of the College and he was working on a class-IV post of Lab-boy purely on temporary basis and he was confirmed on the post of Lab-boy but petitioner was promoted to the post of Mediaman vide memo No. 945 dated 30.05.1990 without following the procedure of law. The post of Mediaman is a technical post which requires technical qualification. No permission was sought for from the State of Bihar for such promotion and since the promotion of petitioner from the post of Lab-boy (class-IV) to Mediaman (Class-III) was found illegal, he was rightly demoted to the post of Lab-boy. It is submitted that case of petitioner stands on different footing as that of *Jitendra Prasad Singh, Narendra Singh and Pramod Kumar* as they were appointed on the class-III post on temporary basis and later on the managing committee of the College regularized their services on class-III post. The Government of Bihar also, while taking over the College, regularized their services in accordance with law. The order of regularization of their services was by the Government of Bihar and the same was not noticed during the course of audit and on this ground their order of termination were set aside by this court. The service of the petitioner, after being appointed by the managing



committee of College in the year 1972, was regularized on the post of Lab-boy (class-IV). The college was taken over by the Government of Bihar and appointment of the petitioner was not found illegal but promotion of the petitioner on the post of Mediaman was found illegal without following the procedure of law. Consequently, the petitioner was demoted to the post of Lab-boy.

Having considered the submission of both sides and on perusal of the records, I find that the petitioner was appointed on the post of Lab-boy, a class-IV post, by the managing committee of College on 30.10.1972 on temporary basis with effect from the date of his joining. When the College was taken over by the Government of Bihar the service of the petitioner on the post of Lab-boy was confirmed. The audit report pointed out that promotion of the petitioner to the post of Mediaman is illegal as the petitioner did not hold any basic qualification for the post of Mediaman and no procedure for such promotion was adopted. The petitioner was noticed and he filed his show cause. Of course, the petitioner in his show cause stated that he has got requisite qualification but when during the course of hearing the learned counsel for the petitioner was asked to produce the requisite qualification, for the purpose of promotion to the post of Mediaman, the learned counsel for the petitioner failed to produce any document.

The learned counsel for the petitioner has submitted that petitioner has worked for more than 16 years on the post of Mediaman but he has been demoted without following the procedure but I find no force in the submission of learned counsel for the petitioner. It is apparent that promotion of petitioner from the post of Lab-boy to Mediaman is absolutely illegal. Even if the case of petitioner is remanded for reconsideration on the ground of violation of principles of natural justice, since the petitioner lacks basic qualification for promotion to the post of Mediaman, that shall be an empty formality



as the petitioner failed to satisfy this court that he has got requisite qualification for promotion on the post of Mediaman.

From the perusal of orders passed in the case of Jitendra Prasad Singh (CWJC No. 7049 of 2007), Narendra Singh (CWJC No. 9095 of 2007) and Pramod Kumar (CWJC No. 7148 of 2007) it appears that they were appointed on the post of clerk by the managing committee of College and when the College was taken over by the Government their services were regularized on the post of clerk but the auditor, during the course of audit, did not notice the orders of the Government of Bihar on account of which the auditor pointed out illegality and services of Jitendra Prasad Singh, Narendra Singh and Pramod Kumar were terminated. This court found that the order of regularization was not noticed by the auditor and accordingly their orders of termination from service were quashed by this court.

Having considered the facts aforesaid and discussions made above, I do not find any illegality in the impugned order. This writ petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	23.08.2017
Uploading Date	13.04.2018
Transmission Date	N.A.

