

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7617 of 2015

=====

Jagannath Jha aged about 60 years son of Late Achuta Nand Jha resident of Village
Tatuar Police Station-Manigachi, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Health, Govt. of Bihar, Patna.
2. Under Secretary Health Services, Government of Bihar, Patna.
3. State Leprosy Officer, Bihar Patna.
4. Regional Deputy Director Health Services Kosi Division Saharsa.
5. The Civil Surgeon-cum-Chief Medical Officer Saharsa.
6. The Additional Chief Medical Officer Saharsa (D D O).
7. The District Leprosy Officer Saharsa.
8. Dr. Bhola Nath Jha son of not known at present posted as Civil Surgeon-Cum-Chief Medical Officer Saharsa.
9. Sri Ganesh Prasad, son of not known, Head Clerk in the Office of the Civil Surgeon-Cum-Chief Medical Officer Saharsa.
10. Director-in-Chief, Health Services, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-07-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

releifs:

“That this is an application for issuance of a writ of mandamus upon the respondents to pay the petitioner his all post retiral benefits including Pension, GPF, Gratuity, leave encashment, GSS and all other payable due amounts, which became due on superannuation of the petitioner with effect from 31.01.2015 from the post of Non-Medical Assistant, Primary Health Centre, Salakhua Block Saharsa vide Office Order No. 23 dated 29.01.2015 issued by the District Leprosy Eradication Officer Saharsa (Respondent No. 7).”



3. By various orders, the Court had called upon the authorities to file affidavits with regard to genuineness of the appointment of the petitioner and the documents on the basis of which he claims to have been appointed. Various affidavits have been filed on behalf of the authorities which goes to show that right from the year 2003 and even in the present, there is no record available, either at the State Headquarter level or in the office of the Civil Surgeon-cum-Chief Medical Officer, Darbhanga and Saharsa relating to any communication order or appointment of the petitioner. Another point taken by the State authorities was that the Civil Surgeon-cum-Chief Medical Officer was not the Competent Authority to make appointment. On such stand, learned counsel for the petitioner submitted that prior to 2001, there was no requirement of any permission as the Civil Surgeon-cum-Chief Medical Officer himself was the appointing authority on a post on which the petitioner had been appointed.

4. Learned counsel for the State submitted that there being no record available relating to such appointment and even on the issue of such appointment and the language and tenure itself showing that it was pursuant to the order of the State Government and even at the State Government level, no such order having been sent to the Civil Surgeon-cum-Chief Medical Officer, Darbhanga for appointing



the petitioner, no relief can be granted to him.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that no relief can be granted to the petitioner. For grant of relief, the petitioner has to prove beyond a shadow of doubt that his very initial appointment was valid in the eyes of law, for right to salary and pensionary benefits flow only from a valid legal appointment. In the present case, right from the year 2003, it has been verified that there are no records available, either at the district level or the State Headquarters level relating to any direction given for appointment of the petitioner or even with regard to any appointment letter being issued to him. The copy of the appointment letter produced by the petitioner i.e., Annexure -29 to his supplementary affidavit discloses that it is clearly written that it was in terms of the direction of the Government. Thus, the petitioner cannot be allowed to take a contradictory stand, inasmuch as, if his claim that the Civil Surgeon-cum-Chief Medical Officer was competent to appoint then there is no explanation as to why he had appointed the petitioner pursuant to a direction of the Government. The two stands cannot be reconciled. Moreover, when there are no records available, the plea of learned counsel for the petitioner that the documents be sent for verification, is meaningless as verification can only be in relation to the available



records in the concerned Department. When the categorical stand is that no documents relating to such transaction is available, no question arises with regard to any verification from the official records. Even otherwise, since neither any person involved in the transaction is in service today, the State authorities are correct in taking the stand that such documents clearly cannot be accepted as valid for granting any relief to the petitioner.

6. At this juncture, learned counsel for the petitioner submitted that the Civil Surgeon has certified in his application form under the Right to Information Act that because of flood in the year 2004, records for such period when the petitioner was appointed is unavailable and, thus, it cannot be said that appointment letter was never issued in favour of the petitioner. The Court is noticing the aforesaid argument only for the sake of rejecting the same for the simple reason that even in the year 2003 i.e., prior to the so called flood in the years 1987 and 2004, the records prior to that day were available and, thus, from those records also, there was no verification with regard to the appointment letter or issuance of the same from the office of the concerned Civil Surgeon. Thus, the reference to the 1987 and 2004 floods is irrelevant for the reason that after the 2004 flood, both the floods have been referred whereas in the letter of the year 2003, there is absolutely not even a whisper that the records relating



to the present matter were not available due to any flood. Thus, when prior to reference to the flood of 2004 there is an official document indicating that no records are available in the office, any event which took place after such certification is clearly inconsequential for the purpose of consideration of the present writ petitioner. Moreover, the bottom line is that for having any basis for claiming any relief, the petitioner has to prove his documents and the validity of his appointment by moving before the Civil Court of competent jurisdiction which is competent to go into all factual aspects and give a firm declaration after evidences being adduced before it. The present forum is, thus, inadequate for such purpose.

7. In view of the aforesaid, the Court does not find any ground to interfere and accordingly, the writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	
U	

