

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21043 of 2013**

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DR. JAY NARAYAN PRASAD SON OF LATE SHIVJEE PRASAD  
RESIDENT OF VILLAGE - LAUKAHI, POLICE STATION - LAUKAHI,  
DISTRICT - MADHUBANI

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Health & Family Welfare Department, Government Of Bihar, Patna
3. The Joint Secretary, Health & Family Welfare Department, Government Of Bihar, Patna
4. The Deputy Secretary, Health & Family Welfare Department, Government Of Bihar, Patna
5. The Chairman, Bihar Service Commission, Bihar, Patna
6. Dr. Shashi Bhushan Sharma Father'S Name Not Known, Presently Posted As Civil Surgeon - Cum - Chief Medical Officer, Lakhisarai

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Suraj Narain Yadav  
For the Respondent/s : Mr. Sanjay Pandey

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**

**CAV JUDGMENT**

**Date : 26-02-2018**

This writ petition under Article 226 of Constitution of India has been filed for a direction to Respondents-authorities to correct the seniority position of petitioner placing him at appropriate place above the ad hoc appointees of 1979 onwards in the gradation list published vide Memo No. 778(2) dated 17.6.2005 and subsequent gradation lists published vide Memo No.171(3) dated 8.2.2008 and Memo No. 405(3) dated 13.5.2010 giving the petitioner due seniority with effect from 6.12.1976.

2. Briefly stated the fact of the case as stated in the petition is that State Government appointed numbers of Civil Assistant



Surgeons on ad hoc basis for six months in the Department of Health in the year 1976 by various notifications. Petitioners along with 30 others were appointed as Civil Assistant Surgeons in the Department of Health by notification No. 1767(2) dated 12.11.1976 and his service was placed under the Regional Deputy Director of Health, Tirhut Division, Muzaffarpur, for posting. At that time petitioner was house physician in the Medicine Department, Bhagalpur Medical College and Hospital, Bhagalpur. The petitioner was posted as Medical Officer in Primary Health Centre, Bathnaha, by order dated 23.11.1976 under the Civil Surgeon, Sitamarhi, and he submitted his joining on 6.12.1976 and petitioner was posted as 1<sup>st</sup> Medical Officer in Major Ganj Block, Sitamarhi by Memo No. 4524 dated 7.12.1976. Petitioner started working as Medical Officer and his services was extended for further six months from time to time. BPSC had advertised for appointment/regularization of the ad hoc appointee Medical Officers/Civil Assistant Surgeons vide advertisement No. 142/1976. Petitioner applied for the said post and appeared in the interview and the BPSC had made recommendation in the year 1977 in favour of petitioner which is an admitted fact. Although State Government received the recommendation of the BPSC in favour of petitioner in the year 1977 itself, but it sat tight over the



matter for about four years without any reason and by notification no. 648(2) dated 4.5.1981 regularize the petitioner's service with effect from 1.4.1981. Along with petitioner, services of 46 other Civil Assistant Surgeons were also regularized. In the year 1979, a large number of Medical Officer/Civil Assistant Surgeons were appointed on ad hoc basis for six months and extension to their services were granted from time to time. Respondent no. 6 is one of them who was appointed on 15.3.1979 on ad hoc basis along with others. State of Bihar enacted Bihar Gazetted Officers Ad Hoc Appointments Regularization Act, 1987 with a view to regularizing the ad hoc appointments made in Gazetted post. By virtue of the provision under Section 3(1) of the Act appointment made on the Gazetted posts continuing up to 30.6.1986 were excluded from the purview of Commission. Under Section 3(2) of the said Act the services of ad hoc appointees Gazetted Officers up to 30.6.1986 were regularized with effect from the date of their appointment. By virtue of the provision of the aforesaid Act the services of the Medical Officers/Assistant Civil Surgeons, who were ad hoc appointees of 1979 and afterwards were regularized by different notifications issued in the year 1998. Respondent no. 6 was also regularized vide notification dated 163(2) dated 7.12.1998 with effect from his initial date of appointment and he



was placed at serial no. 3099 above the petitioner in 2005 gradation list and also in 2000 gradation list. His position in 2010 gradation list is at 376 whereas petitioner has been placed at serial no. 929. Petitioner's position in the seniority list was at serial no. 3025 in the cadre of Bihar State Health Services as per the final gradation list notified by Notification No. 240(4) dated 15.7.1993. In the aforesaid gradation list appointees till 1978 serial nos. 1 to 3053 were placed. In the said seniority list position of doctors of the final seniority list dated 15.7.1993 was maintained upto 3053 and from serials 3054 to 10121 was added provisionally. In the year 2005 the petitioner's seniority was disturbed in the gradation list published vide Memo no. 778(2) dated 17.6.2005 and he was placed at serial no. 3891. The final seniority list dated 15.7.1993 as maintained vide next seniority list dated 17.10.1994 was also disturbed without any notice to the petitioner and others. The ad hoc appointees of 1979 and afterwards were placed above the petitioner as their services were regularized by virtue of 1987 Act with effect from the date of their ad hoc appointment when the notification says that the persons upto serial no. 3099 has been placed on their position as it was. Petitioner filed an objection on 15.7.2005 against his placement at serial no. 3891 in the seniority list dated 17.6.2005 in place of his seniority position at serial no.



3025. Petitioner challenged the same in CWJC no. 7043 of 2006 and during the pendency of the aforesaid case again final seniority list was published vide Memo no. 171(3) 8.2.2008 and petitioner was placed at serial no. 3900. Petitioner challenged the said seniority list dated 8.2.2008 in the said writ application by filing I.A. No. 7392 of 2008. During the pendency of the aforesaid writ again provisional seniority list was published vide Memo No. 405(3) dated 13.5.2010 and in the said seniority list the name of persons, who had retired or died or were repatriated to Jharkhand and doctors who joined the cadre of Medical College were deleted. In the said seniority list petitioner was placed at serial no. 929 below the 979 ad hoc appointees. The aforesaid seniority list was provisional and thereafter no final seniority list was published. However, the aforesaid provisional list was not challenged in the aforesaid CWJC No. 7043 of 2006. State of Bihar as well as Bihar Public Services Commission filed their counter affidavit in the said writ petition and same was disposed of by order dated 20.4.2011 with direction to the respondent to revise the final gradation list giving due seniority of the petitioner with effect from 6.12.1976 from the date of his joining within a period of one month from the date of production of the copy of the order. Respondent-State filed LPA no. 1209 of 2011 against the order



dated 20.4.2011 passed in CWJC No. 7043 of 2006. The said LPA was disposed of by order dated 12.8.2013 and the appeal was allowed. The judgment of writ court dated 20.4.2011 was set aside and writ petition was allowed to be withdrawn with liberty to file substantive proceeding in the same subject matter but after joining the necessary parties. By letter dated 21.2.2012 fifty-five doctors were called for interview by the Screening Committee as they were under the zone of consideration. Petitioner's name was not there although 43 persons were junior to him. The date fixed for interview on 25.2.2012 was postponed and extended to 3.3.2012. Petitioner filed CWJC no. 4102 of 2012 which was disposed of by order dated 1.3.2012 with direction to allow petitioner to appear in the said interview and petitioner appeared thereafter and his name was included in the list of promotion/posting to the post of RDDH/Civil Surgeon/equivalent post. By notification no. 363(3) to notification no. 397(3) all dated 30.6.2012, thirty-five persons were promoted/posted to the post of Civil Surgeon/Additional Civil Surgeon/other equivalent post. Persons who were promoted/posted by notification dated 30.6.2012 were junior to petitioners who were appointed on ad hoc basis in 1979 and thereafter their services were regularized in 1998 from the date of initial appointment by virtue of the Act. The benefit of the



provision of the said Act was not extended to the petitioner. Four years and four months services of the petitioner has been truncated illegally.

3. A counter affidavit has been filed on behalf of the respondents in which it has been stated that Bihar Gazetted Officers Ad hoc Appointments Regularisation Act, 1987 only applied to those officers who were not regularised. The benefits of the said Act could not be granted to regular employees who sought his confirmation by the commission and seniority of the petitioner would only be calculated from the date of his regularization. It has further been stated that there is no illegality in placing the petitioner at bottom of the private respondent since by virtue of a valid statute the said private respondent was treated in regular employment from a date prior to regular appointment of the petitioner. Moreover, the notification relating to confirmation of the private respondents from a date prior to the confirmation of the petitioner has also been left undisturbed for about fifteen years. As such, claim of the petitioner is hit by delay and laches.

4. After hearing learned counsel for the petitioner and learned counsel for the State, this Court feels that petitioner has been made to suffer for fault and laches of state, juniors who were appointed on ad hoc basis after appointment of petitioners, have



been made senior in the gradation list. Either date of regularisation of petitioner is to be shifted from the date of his appointment on ad hoc basis or he has to be given benefit of the said Act, application of which has caused injustice to petitioner. Although Respondent no. 6 has been made party in representative capacity in order to protect the interest of private respondents but even after taking all steps for service of notice, he has chosen not to appear. As a matter of fact, there was no inter se dispute between the petitioner and ad hoc appointees, who became senior to the petitioner on the basis of the provisions of the Act, but there cannot be any dispute between them as admittedly petitioner has joined and was appointed much prior to them. The issue was whether the appointment of the petitioner is to be treated from the date of his ad hoc appointment in service or the benefit of Act should also be extended to the petitioner. In considered view of this Court, the date of regularization of petitioner is to be shifted to his initial date of ad hoc appointment in order to meet justice to petitioner who has all along been discriminated.

5. This Court fails to understand how can State be aggrieved by a direction to treat regular appointment of petitioner as 6.12.1976 when State itself delayed the recommendation of BPSC made in 1979 by four years and it cannot take benefit of its own



wrong and petitioner cannot be made to suffer for fault and laches of State.

There cannot be any inter se dispute between petitioner and other ad hoc appointees ( Private Respondents) as they cannot claim seniority above petitioner as date of petitioner's ad hoc appointment is 6.12.1976 whereas date of ad hoc appointment of other ad hoc appointees is of much later period.

Injustice done to petitioner on account of implementation of Bihar Gazetted Officers ad hoc appointment Regulation Act, 1987 was required to be undone by this Court on the ground of equity, justice and fairplay.

6. The writ petition is allowed and Respondents-authorities are directed to treat the date of regularization of the petitioner from date of his initial appointment on ad hoc basis i.e., 6.12.1976 with all consequential benefits and petitioner to be placed in seniority list/gradation list treating his date of regular appointment as on 6.12.1976.

7. The writ petition stands allowed.

**(S. Kumar, J)**

sudip/-

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