

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13548 of 2016

Radha Raman Prasad Singh S/o Late Shri Mathura Prasad Singh, Resident of
Village-Sahjampur, P.S. Atari, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Health,
Government of Bihar, Patna
2. The Director-in-Chief (Administration), Government of Bihar, Patna.
3. The Deputy Director, Health Service (Administration), Government of Bihar,
Patna.
4. The Regional Deputy Director, Health Services, Patna Division, Patna.
5. The District Magistrate, Nalanda.
6. The Civil Surgeon-cum- Chief Medical Officer, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Bindhyachal Singh, Satya Prakash,
Ms Smriti Singh, Advocates
For the Respondent/s : Ms Ratna Kumari, AC to PAAG II

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 21-02-2019

Heard Mr Bindhyachal Singh for the petitioner as well
as Ms Ratna Kumari, learned AC to PAAG II for the State.

2 The petitioner has filed the writ petition for quashing
the speaking order dated 11.03.2016 issued by the Director-in-
Chief (Administration), Health Services, Bihar, Patna whereby the
services of the petitioner as Clerk in the office of the Civil
Surgeon, Nalanda have been terminated. The order passed by the
Appellate Authority dated 06.06.2016 affirming the said order has
also been challenged in the writ petition.



3 It is submitted by the petitioner's counsel that the petitioner was appointed way back in the year, 1981 by Annexure 3. The petitioner, during his service, was also granted promotion pursuant to decision of a duly constituted committee, which is evident from Annexure 7 dated 03.11.1990. Learned counsel for the petitioner has submitted that the impugned order, terminating the services of the petitioner without any enquiry and without resorting to the procedure prescribed under the Bihar Government Servants (Classification, Control & Appeal) Rules (for brevity, *Bihar CCA Rules*), is unsustainable.

4 Learned counsel for the State has submitted that the appointment of the petitioner was not done by the competent authority. Even the promotion granted to the petitioner was by an incompetent authority. The existence of the petitioner in service was illegal and that only for the reason that no proceedings have been conducted against the petitioner in spite of liberty granted by this Court in the proceedings arising out of *CWJC No 3637 of 1982* and because no proceeding was conducted pursuant to the order dated 11.08.2015 issued by the *Lokayukt*, petitioner cannot absolve himself from his illegal existence in service.

5 Order dated 11.08.2015 of the Lokayukt, Bihar, Patna has been referred to by the learned State Counsel in the counter



affidavit. It takes note of the fact that upon an enquiry report being submitted by a Two Members Enquiry Committee, which had gone into the validity of petitioner's appointment and promotion, the Lokayukt, Bihar, Patna had directed for conducting proceedings against the petitioner as per law and submit report in light of the enquiry report.

6 This Court would notice that without taking the action in accordance with law pursuant to the order passed by the Lokayukt, Bihar, Patna, relying upon the earlier report submitted by the Two Members Committee, the petitioner has been visited with the extreme civil consequence of dismissal from service. The petitioner's dismissal is within two years from the date on which he was to attain superannuation. Petitioner has attained the age of superannuation on 28.02.2018.

7 Since from the averments made in the counter affidavit, it is obvious that no enquiry in accordance with law, as was mandated by the order dated 11.08.2015 passed by the Lokayukt, Bihar, Patna was ever conducted, the impugned order terminating the petitioner from his services being a product of an illegal exercise even without serving a charge memo on the petitioner cannot be countenanced.



8 The impugned orders dated 11.03.2016 and 06.06.2016 issued by the Director-in-Chief (Administration), Health Services and Principal Secretary, Health Department respectively are hereby quashed for the reasons indicted herein above.

9 The petitioner, admittedly, has not worked during the period between 11.03.2016 and to 28.02.2018. The relief has been granted to the petitioner on the basis of consideration that no enquiry was conducted against the petitioner in accordance with law. The petitioner has, therefore, benefited due to procedural lapse on account of inaction of the respondent-authority in not taking any action in spite of liberty granted in the proceedings arising out of *CWJC No 3637 of 1982* as well as the order of the Lokayukt dated 11.08.2015.

10 In the circumstances, this Court would consider it appropriated that since, admittedly, the petitioner had not worked during the period taken note of herein above, the consequential benefits, except actual salary from the date between 11.03.2016 to 28.02.2018 would flow to the petitioner as natural consequence of quashing the orders impugned in the writ petition, on the principle of no work no pay. All other benefits including the length of



service for the said period between 11.03.2016 to 28.02.2018 should be made available to the petitioner.

11 Learned counsel for the petitioner has also submitted relying upon decision in the case of P V Mahadevan -Versus- MD, T N Housing Board, (2005) 6 Supreme Court Cases 636 that now since so much time has lapsed, the respondents may not be permitted to proceed against the petitioner as they were in knowledge of the facts right from disposal of the writ petition bearing *CWJC No 3637 of 1982*.

12 This Court would observe that the respondent authorities could only have liberty as is permissible under the extant Service Rules in this regard.

13 Writ petition is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

