

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4005 of 2019

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Rakesh Singh (M), aged about 44 years, S/o Late Chandeshwar Singh,
Resident of Village and P.O -Bara, P.S.-Alipur, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-In-Chief, Health Services, Government of Bihar, Patna.
4. The District Magistrate, Gaya, District Gaya.
5. The Civil Surgeon-Cum-Chief Medical Officer, Gaya.
6. The Incharge Medical Officer, Paraiya, Gaya.
7. The Deputy Superintendent, Sub Divisional Officer, Tekari, District-Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.
Ms. Shally Kumari, Adv.

For the Respondent/s : Mr. Sudhir Kumar Singh, AC to SC-23

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 14-05-2019

A supplementary counter affidavit has
been filed on behalf of the Civil Surgeon-Cum-Chief
Medical Officer, Gaya (respondent No. 5) during the
course of the argument.



2. Let the aforesaid affidavit be taken on record.

3. Heard Mr. Siya Ram Shahi, learned Advocate for the petitioner and Mr. Sudhir Kumar Singh, learned AC to SC-23.

4. The petitioner has challenged the order dated 17.05.2017, contained in Memo No. 1397, passed by the Civil Surgeon-Cum-Chief Medical Officer, Gaya, whereby the promotion granted to the petitioner has been withdrawn/cancelled on the complaint of a self-styled person claiming himself to be the spokesperson of a Non-Governmental Organization (N.G.O.) called *Bihar Vikash Morcha*.

5. The argument advanced on behalf of the petitioner is that the promotion was granted to the petitioner pursuant to the rules framed in that regard and also after the intervention of this Court, which had led to the constitution of a Two-Member Committee to find out whether there were any irregularities in



promotion of the petitioner and similarly situated persons from Class-IV to Class-III post in the Department. The promotion was granted only after it was found that the petitioner and others were entitled to be promoted and such entitlement arose because of the petitioner having served the Department for a particular number of years and availability of the vacancy as well as the roster clearance. The District Magistrate, it has been urged, is no authority to interfere in the matters of promotion from Class-IV to Class-III post and the concerned body under the rules framed in that regard comprises the Civil Surgeon-Cum-Chief Medical Officer, an Additional Chief Medical Officer and one person of the SC/ST category chosen by the President of the Committee.

6. The learned counsel appearing for the State, on the other hand, has insisted upon the fact that only on the basis of a complaint made by a spokesperson of an N.G.O., the order impugned in the



present petition has been passed.

7. Nothing has been stated in the counter affidavit as well as in the supplementary counter affidavit to indicate the reasons for cancelling the order of appointment, more so, when it was passed in accordance with the rules and after the intervention of this Court and queerly, the order also does not reflect any reason for such cancellation of promotion whatsoever. All that has been urged on behalf of the State is that the District Magistrate is the overall in Charge of Health Services and notwithstanding that he is no authority under the law with respect to such promotions, he had directed for the cancellation of the promotion which was already granted and confirmed by the concerned authority and consequently such an order was passed by the Civil Surgeon-Cum-Chief Medical Officer, Gaya, following the directions of the District Magistrate.

8. The facts giving rise to this case is not



straight.

9. The petitioner was appointed on compassionate ground on the post of Health Worker some times in the year 1992 at Tekari, Gaya. Thereafter, he was promoted from Class-IV to Class-III post, but only after the intervention of this Court. When the promotion, it may be recounted, was not being given to the petitioner, he had approached this Court under writ jurisdiction and a Two-Member Committee was constituted on the orders of this Court. On the basis of the report submitted by the aforesaid Two-Member Committee, the promotion to the petitioner was granted, which was later confirmed. The order confirming the promotion to the petitioner is dated 28.06.2016 contained in Memo No. 1786 (Annexure-18 to the writ petition). The petitioner thereafter had been working on Class-III post satisfactorily. It was only when a complaint came to be filed, not with respect to the conduct of the petitioner,



but with regard to rules having been bypassed in promoting the petitioner from Class-IV to Class-III post, that the District Magistrate, in his wisdom, directed for cancellation of the promotion and which direction was blindly followed by the Civil Surgeon-Cum-Chief Medical Officer, Gaya.

10. As noted above, the only defence of the learned State counsel to the order impugned in the present petition is the intervention of the District Magistrate, who is overall in Charge of the Health Services in a district.

11. The learned counsel for the petitioner has drawn the attention of this Court to the relevant rules in this regard, *viz.*, Bihar Health Regional Clerical Cadre Rules, 2014. Rule 15 thereof deals with the Promotion and for District Level Promotion, the body which would consider the cases of the employees would comprise the Civil Surgeon-Cum-Chief Medical Officer, who would be *ex officio* President of the Committee, an



Additional Chief Medical Officer as Secretary to the Committee and one person as Member, who would be chosen by the President from amongst SC/ST category of persons. The District Magistrate is no authority to direct the aforesaid Committee regarding promotion. Apart from this, the order passed by the Civil Surgeon-Cum-Chief Medical Officer, Gaya does not at all indicate the reasons or for that matter the complaint or as to how the promotion which was granted to the petitioner was in breach of such rules.

12. The conduct of the District Magistrate, therefore, appears to be absolutely reprehensible. The District Magistrate has, in the opinion of this Court, behaved like a loose canon and has only shown unnecessary proclivity of interfering with the effective administration of the Health Society. The conduct of the District Magistrate cannot be countenanced on any ground whatsoever. The Civil Surgeon-Cum-Chief Medical Officer, Gaya has also completely abdicated his



responsibilities as the President of the Committee and without referring to any of the grounds raised by an N.G.O. or the direction of the District Magistrate, has cancelled the promotion of the petitioner by a non-speaking order. Such an order which has been impugned in the present petition smacks of exercise one's power in a blatant manner.

13. This Court not only expresses surprise but is shocked at the manner in which the District Magistrate has acted as an extra constitutional authority in directing the Civil Surgeon-Cum-Chief Medical Officer, Gaya in cancelling the promotion of the petitioner, even though such promotion granted to the petitioner earlier was approved. This Court would have understood if the reasons would have been recounted for cancelling the promotion. The breach of rules have not been formulated and not only the petitioner, but this Court is also in a fix as to where and how the rules have been breached.



14. I would leave the issue at that.

15. This Court therefore does not find any merit in the order impugned in the present petition. The same is accordingly set-aside.

16. The matter is remitted to the Civil Surgeon-Cum-Chief Medical Officer, Gaya to write out a fresh order in accordance with law within a period of four weeks from the date of receipt/production of a copy of this order.

17. With the aforesaid observation and direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.05.2019
Transmission Date	N/A

