

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19162 of 2015

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Sushma Kumari daughter of late Om Prakash resident of Shukul Gali, Shvijganj, P.s and District Bhojpur at Ara presently residing at L.B.S. Path, Police Colony, P.s Anisabad, District Patna.

... .. Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Health , Bihar, Patna.
3. The Director-in-chief, Health Department, Govt. of Bihar, Patna.
4. The Joint Director-cum-State Programme Officer, Bihar, Patna.
5. The Joint Director, Health Services ,Bihar, Patna.
6. The District Magistrate, Bhojpur at Ara.
7. The Chief Medical Officer-cum-Civil Surgeon, Bhojpur at Ara.
8. The District Leprosy Eradication Officer, Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Sangeet Deokuliar
For the Respondent/s	:	Mr. Rohitabh Das, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-04-2019

Heard learned Senior Counsel appearing for the petitioner as well as learned State Counsel.

The petitioner seeks a direction that the respondents should accept her joining dated 19.5.2009 on the post of Non Medical Assistant.

The brief background is that the petitioner was appointed on compassionate ground on 5.3.1990. The appointments were thereafter terminated after three months under a general direction of the respondent authorities. The admitted



position is that in light of the order passed in CWJC No. 12758 of 1992 the petitioner came back in service on 13.12.1993. The petitioner has thereafter continued in employment as Non Medical Assistant in the office of Civil Surgeon -cum- Chief Medical Officer, Bhojpur at Ara. From 1.9.2001 till 19.5.2009 the petitioner remained absent from duties. The total period of her absence is seven years four months. The petitioner thereafter submitted her joining on 19.5.2009. The District Leprosy Eradication Officer, Bhojpur at Ara, wrote to the Director-in-Chief, Health Services, seeking guidelines as to whether the petitioner's joining was to be accepted on account of the claim made by the petitioner that she was medically unfit for joining in the said period. All the documents in support of her illness along with fitness certificate were forwarded to the Director-in-Chief along with the communication dated 1.6.2009 subsequent upon petitioner's joining on 19.5.2009.

Thereafter the petitioner admittedly was never permitted to join. Roughly six years thereafter instant writ proceedings have been initiated by the petitioner seeking a direction for acceptance of her joining submitted on 19.5.2009.

The respondents in the counter affidavit have taken a stand, placing reliance on Rule 76 of the Bihar Service Code, to



contend that in view of continued long absence for more than five years the petitioner would be deemed to have been terminated from service. The Rule contemplated automatic cessation of masters – servant relationship on account of continued absence.

Rule 76 of the Bihar Service Code has been held to be *ultra vires* in the judgment of this Court in the proceedings arising out of ***CWJC No. 2050 of 1970*** in the case of ***Sobhna Das Gupta Vrs State of Bihar & ors.*** The reliance placed by the State on the said rule, therefore, is unsustainable in the eyes of law.

There is no automatic cessation of the masters- servant relationship between the petitioner with the respondent authorities. Even otherwise, there is no order dismissing or terminating petitioner's services after complying with the principles of natural justice or affording her an opportunity of hearing in the matter.

This Court, therefore, would hold that the petitioner would be deemed to be in continuous service till such time the authorities take a decision as regards the said period of absence in accordance with law after affording due opportunity to the petitioner.

However before parting with this order, this Court would only observe that apart from admitted absence since 1.9.2001 to 19.5.2009 the petitioner has delayed for about six years, from the



date she submitted her joining, till filing of the writ petition in the year 2015. Other than submitting that petitioner had in the meantime been making representation, there is nothing on record to show any sufficient or justifiable cause for such belated approach to the writ court. In the circumstances, this Court would hold that the petitioner on the principle of *no work no pay* would not be entitled to pay automatically as a consequence of this order for the period May 2009 till December 2015 i.e. when she filed the instant writ petition. Entitlement of the petitioner for the period 01.09.2001 till 19.5.2009 would abide by the decision to be taken by the authorities in respect of her claim for being medically unfit in the said period, which claim has already been forwarded in the communication of the District Leprosy Eradication Officer to the Director-in-Chief, Health Services, by communication dated 1.6.2009.

The petitioner be permitted to resume her duties forth with along with other admissible consequential benefits in accordance with law and the authorities should proceed to take decision on the claim made by the petitioner as forwarded by the District Leprosy Eradication Officer, Bhojpur at Ara, under communication dated 01.06.2009.



The writ petition is allowed with the aforesaid observations.

SNkumar/- (Madhuresh Prasad, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.05.2019
Transmission Date	N/A

