

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.925 of 2019

In

Civil Writ Jurisdiction Case No.14946 of 2019

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Dr. Narendra Pratap Singh, aged about 59 yrs (Male), S/o Late Virendra Pratap Singh, Resident of Mohalla- B/17 Peoples Co-operative Colony, Kankarbagh, District- Patna.

... .. Writ Petitioner-Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Health Department, Govt. of Bihar, Patna.
4. The Deputy Director, Health Department, Govt. of Bihar, Patna.
5. The Deputy Director, Health Department (Medical Education), Govt. of Bihar, Patna.
6. The Additional Director Health Department (Medical Education), Govt. of Bihar, Patna.
7. The Principal, Patna Medical College and Hospital, Patna.

... .. Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Y. V. Giri, Senior Advocate
Mr. Sumit Kumar Jha, Advocate
Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. S.D.Yadav (AAG 9)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-08-2019

Heard Shri Y. V. Giri, learned Senior Counsel for the appellant.

There is no dispute that the appellant was promoted as a Professor of Psychiatry and was then transferred on 30th June,



2014 to Nalanda Medical College & Hospital from Patna Medical College and Hospital. This transfer order was resisted by the appellant and he made a request to the Principal of the Institution not to relieve him with a further request to allow him to continue on the post that was available.

It may be mentioned that the appellant in respect of his seniority and claim for promotion had also earlier filed CWJC No.6206 of 2012. The question of his continuance, as against another individual at PMCH was being tested on the judicial side in the aforesaid writ petition where orders were passed in January to April, 2019. Copies of the said orders passed on 24.01.2019 to 3rd April, 2019 have been filed in the writ petition as Annexure-10, 11, 12 and 2/A respectively. The last order which was passed in the said writ petition on 14th March, 2019 fixing 3rd April, 2019 is extracted hereinunder:-

“Learned counsel for the petitioner submits that second post of Professorship has been created in Psychiatric Department, but the same is still vacant and having not been filled up by the Government and he is agreeable to be accommodated in the second post of Professorship in Psychiatric Department.

Let the State take instruction in the matter.

As prayed for, let this case be listed on 03.04.2019 under the same heading.”



A perusal of the said order would indicate that the appellant was continuing in the Patna Medical College and Hospital and keeping in view the vacant post available, the Court had called upon the State Government to take instructions in the matter and assist the Court by the next date fixed which was 3rd of April, 2019.

It appears that the Under Secretary, Government of Bihar on 2nd of April, 2019, i.e., just a day earlier to the date fixed before the Court, issued a show cause to the petitioner as to why he has not joined on the transferred place and why should appropriate disciplinary action be not taken in this regard.

It appears that the State instead of answering the said query appropriately, immediately proceeded against the appellant and thereafter has suspended the appellant with his Headquarters at Bhagalpur and the enquiry to be proceeded at Patna. It is this cause of action that resulted in filing of the writ petition giving rise to this appeal that has been disposed of on 25th July, 2019 holding that the order of suspension does not deserve to be interfered with on the ground of malafides as it would adversely affect either of the parties in future proceedings. However, the learned Single Judge has observed that the appellant would be entitled to make a request for alteration of the place of his attachment from



Bhagalpur to Patna, and in the event such a request is not acceded to by the Government, he would be entitled to leave with salary pending departmental proceedings as well as admissible travelling allowance commensurate to his status.

Shri Giri contends that the suspension order is malafide, inasmuch as, for the past five years, the appellant has been continuing at Patna Medical College and Hospital and it is only when the High Court made an observation in the order dated 14th March, 2019 extracted hereinabove, and also threatened with the imposition of cost on 3rd April, 2019, that the appellant has now been put under suspension after five years of the order of transfer. It is urged that the appellant had been recommended for being retained at Patna Medical College and Hospital itself and not only this he was also paid his entire salary without any objection by the State Government. Thus, it was on account of the legal proceedings initiated and the orders passed by the High Court that ultimately irked the Government which prompted the impugned order of suspension.

We have considered the submissions raised and the facts as narrated that are evident from the records. The show cause was issued on 2nd of April, 2019 which was just one day earlier to the date fixed before the Court by order dated 14th March, 2019



extracted hereinabove. Apart from this, we find that the learned Single Judge did not find it expedient to comment upon the allegations of malafides either way in spite of the fact that the writ petition was framed on the basis of such allegations. The learned Single Judge, therefore, did not interfere with the order of suspension, but carved out an order which enabled the appellant to claim leave with salary in the event the Government refuses to change the Headquarters to which the appellant was attached. We could not find this to be a justified approach in the sense that once the suspension order has been maintained, an employee cannot be entitled to full payment of salary with leave on such grounds. An employee under suspension can only receive suspension allowance and, therefore, to that extent the order of the learned Single Judge does not appear to be in conformity with law. Since the learned Single Judge has not investigated the malafides nor did the Court call upon the respondents to file a counter affidavit, we see no justification in the passing of an order as framed and impugned herein.

So far as the suspension of the appellant is concerned, we find that the charge on which the suspension order is based is in relation to an order of transfer that was passed in the year 2014 and is now sought to be executed after five years which is



obviously a stale charge that does not justify the passing of the suspension order at this stage.

Accordingly, we set aside the impugned judgement dated 25th July, 2019 as well as the order of suspension dated 8th July, 2019 and direct that it shall be open to the State Government to post the appellant commensurate to his present status at any place of it's choice and conclude the disciplinary proceedings within three months.

The Letters Patent Appeal stands allowed to the said extent.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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CAV DATE	
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