

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25452 of 2019

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1. Md. Zahid Iqbal, S/o Md. Shababuddin, Resident of Mohalla-Haroon Nagar, Sector-2, P.S. Phulwarisharif, District-Patna. Working as Parwachak (Reader cum-Associate Professor), Govt. Tibbi College and Hospital, Kadamkuan, Patna.
 2. Md. Mahfoozur Rhman, S/o Md. Shafiurrahman, Resident of Mohalla-Maulabagh Phulwarisharif, P.S. Phulwarisharif, District-Patna. Working as Parwachak (Reader cum-Associate Professor), Govt. Tibbi College and Hospital, Kadamkuan, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Patna.
2. The Special Secretary, Health Department, Patna.
3. The Principal, Govt. Tibbi College and Hospital, Kadamkuan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha, Advocate Md. Shahnawaz Ali, Advocate Mr. Shambhoo Kumar "Suman", Advocate
For the State	:	Mr. Ajay Behari Sinha, G.A- 8 Mr. Neeraj Raj, A.C. to G.A.-8

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 18-02-2020 Heard learned counsel for the parties.

2. There are two petitioners, who were appointed on the post of Reader cum Associate Lecturer in the Government Tibbi College and Hospital, Patna, on contractual basis, on 21.04.2014. The appointment order has been brought on record by way of Annexure-1 to the writ application. It is evident from Annexure-1 that their appointment was initially for a period of one year, which was to be extended from time-to-time. It also



appears that they were appointed after holding a walk-in-interview.

3. My attention has been drawn to Annexure-6 of the writ application, which is an order issued by the Health Department, Government of Bihar, dated 10.04.2019, to the effect that the Doctors, appointed on contractual basis, shall continue to work as such, till they attain the age of superannuation or their regular appointment, whichever is earlier. It was specifically mentioned in the said order dated 10.04.2019 that there would not be any requirement of formal extension of their contractual engagement from time-to-time, year-to-year.

4. It appears that petitioners were put on notice, issued by a letter dated 05.11.2019 by the Health Department, Government of Bihar, whereby they were asked to show cause as to why their engagements be not terminated as their initial engagement on contractual basis was made without strictly following the roster points. The petitioners belong to open category, indisputably. The said notice dated 05.11.2019 has been challenged in the present writ application. During the pendency of this writ application, final decision has been taken with issuance of letter dated 03.12.2019 by the Health



Department, Government of Bihar, holding that their appointment on contractual basis, made in the year 2014, was in breach of the roster points fixed by the State Government. Consequent upon issuance of the said letter dated 03.12.2019, the Principal, Government Tibbi College and Hospital, Patna, has issued the consequential letter dated 04.12.2019 cancelling the appointments of the petitioners on contractual basis with effect from the said date. By filing interlocutory application (I.A. 01 of 2019), the petitioners seek amendment in the writ petition to challenge the said letter dated 03.12.2019 and consequent order dated 04.12.2019.

5. Considering the fact that the impugned letter dated 03.12.2019 and order dated 04.12.2019 are in continuation with the notice dated 05.11.2019, which is under challenge in the present writ application, the same is allowed.

6. The petitioners are thus permitted to question the correctness of the impugned letter dated 03.12.2019 and order dated 04.12.2019.

7. Learned counsel appearing on behalf of the petitioners has referred to the impugned letter and has submitted that it does not disclose as to how the petitioners did not fit in the roster points prepared by the concerned department of the



State Government. He contends that there is vague mention of violation of roster points at the time of their initial engagement.

8. A counter affidavit has been filed on behalf of the Respondent State of Bihar, wherein it has been stated that on the basis of legal opinion obtained from competent authorities and sanction from General Administration Department, Government of Bihar, a decision to dispense with the engagement of the petitioners has been taken. It has also been stated that action has been taken after giving the petitioners an opportunity of hearing.

9. Learned counsel appearing on behalf of the petitioners has submitted that the petitioners cannot be blamed if the department had not adhered to the roster points at the time of their initial selection.

10. Learned counsel appearing on behalf of the State, on the other hand, has defended the impugned action of the State Respondents and has submitted that the petitioners do not have any right to hold the post, they being contractual appointees. He has further submitted that the engagement is to be governed by the terms of the order dated 21.04.2014, which stipulated, *inter alia*, that the services of the petitioners would be terminated on giving one month's notice as mentioned in Clause-4 of the same.



11. I have perused the impugned letter and the order. The impugned letter dated 03.12.2019 does not indicate as to how the roster points prepared by the State Government of Bihar were violated and the petitioners were engaged against such roster points, which were not available for open-merit candidates. The impugned letter dated 03.12.2019 and consequential order dated 04.12.2019, therefore, cannot be sustained as it does not reflect due application of mind and the reason how the roster points were violated.

12. This writ application is, accordingly, allowed.

13. The letter dated 03.12.2019 and the consequential order dated 04.12.2019 are, accordingly, set aside.

14. It will be, however, open for the State Respondents to proceed strictly in accordance with the terms of initial engagement of the petitioner dated 21.04.2014, if their services on contractual basis are intended to be dispensed with.

(Chakradhari Sharan Singh, J.)

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