

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3680 of 2020

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Ravindra Kumar, Son of Sri Sudarshan Prasad Sinha, REsident of - rupaspur,
P.O.- Sahay Nagar (Dhanaut), P.s.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Joint Secretary, Health Department, Government of Bihar, Patna.
3. The Director-In-Chief, Health Services, Department of Health, Bihar, Patna.
4. The Director -in-Chief (Administration), Health Services, Department of Health, Bihar, Patna.
5. The Director, Patna division, Health Services, Patna.
6. The Regional Deputy Director, Patna Division, Health Services, Patna.
7. The Chief Medical Officer, Bhojpur.
8. The Deputy Superintendent Sub Divisional Hospital, Danapur.

.. ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Mohit Srivastava, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG-IX Mr. Nagendra Kumar, AC to AAG-IX

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 25-11-2021

Heard learned counsels for respective parties.

In the instant petition, petitioners have prayed for the following reliefs:-

*“(i) For setting aside the order
contained in Letter No. 102(4) dated*



23.01.2020, issued by the Director in Chief, Health Services, Bihar, Patna, whereby the transfer of the petitioner made by order of the Regional Deputy Director, Patna Division, Patna as contained Memo No. 635 dated 26.06.2019 has been cancelled on the ground that the Regional Deputy Director had no jurisdiction to transfer the petitioner and order was passed without taken in to account the jurisdiction of the Regional Deputy Director (RDD) as contained in Memo No. 612 (4) dated 28.03.2011, whereby the power of transfer of Class-II employees was delegated to Regional Deputy Director, and also without providing opportunity of hearing to the petitioner before cancelling his earlier transfer. The Resolution of the Department as contained in Memo No. 658(3) dated 05.10.2006 also gives jurisdiction to the Regional Deputy Director to make inter district transfer within Division of Class III employee.

(ii) For any other relief for which the petitioner may be deemed entitled to.”

Petitioner while working at Jagdishpur, Ara in the post of Pharmacist he has been displaced and transferred to Danapur on 26.06.2019. Such a transfer order has been cancelled by Director-in-Chief (Health Services) on 23.01.2020.

Feeling aggrieved and dissatisfied with the order of cancellation of transfer dated 23.01.2020 the petitioner has filed the present petition.

Learned counsel for the petitioner submitted that the competent authority to transfer Class-III employee is Regional



Deputy Director in respect of particular division (within the division). The petitioner is in the cadre of Pharmacist, therefore, the competent authority to transfer within the division is Regional Deputy Director, therefore, cancellation of transfer order dated 26.06.2019 of the Regional Deputy Director would lie with Director-in-Chief and his order dated 23.01.2020 is without authority of law.

Per contra, learned counsel for the respondent resisted the aforesaid contention of the petitioner and submitted that Pharmacist are governed by Rules called the Bihar Pharmacist Cadre Rules, 2014 in which appointing authority in respect of Pharmacist is Director-in-Chief (Health Services), Bihar.

Annexure-1 dated 05.10.2006 empowering the power to transfer to Class-III employees like Pharmacist, i.e., Regional Deputy Director is concerned. It is submitted that Rule 22 of Rules, 2014 nullifies the order dated 05.10.2006 (Annexure-1) therefore the competent authority to effect transfer of Pharmacist is the Director-in-Chief (Health Services) Bihar.

Heard the learned counsels for the respective parties.

Crux of the present petition is to transfer Pharmacist from one place to another place within a division whether



Director-in-Chief (Health Services) Bihar or Regional Deputy Director is the authority.

Undisputedly, the petitioner was working in Jagdishpur, Ara and he has been shifted to Danapur on 26.06.2019 by the Regional Deputy Director in terms of Annexure-1 Executive order dated 05.10.2006, i.e., within a Division.

Perusal of Rule, 2014 it is in respect of governing the post of Pharmacist Cadre. Under Rule 2 there is no definition of transfer, therefore, one has draw inference that Rules, 2014 do not deal with the transfer of Pharmacist and it is in respect of appointment. Source of transfer of Pharmacist is only under Annexure-1 dated 05.10.2006.

In the light of these facts and circumstances of the case, the contention of the respondent that the Director-in-Chief (Health Services) Bihar is the only competent authority to transfer Pharmacist from one place to another place is not tenable. That apart, Rules, 2014 do not override Executive Order in terms of Rule 22 for the reasons that Rules 14 is in respect of appointment to the post of Pharmacist and not in respect of transfer of Pharmacist. Thus, petitioner has made out a case, impugned order dated 23.01.2020 Annexure-7 passed by the Director-in-Chief



(Health Services) is set aside. Order of transfer dated 26.06.2019
be given effect in accordance with law at the earliest.

Accordingly, the present petitions stands allowed.

(P. B. Bajanthri, J)

Vikash/-

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

