

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8138 of 2020**

Dr. Chandeshwar Rajak S/o Late Bishwanath Rajak, Resident of Village-Bishanpur, Mohanpur Chaumukh, P.S. Bihariganj, District-Madhepura at Present Posted as a Medical Officer, Sub Divisional Hospital, Mohania (Kaimur), District-Bhabhua.

... .. Petitioner

Versus

1. The State of Bihar Bihar
2. Principal Secretary, Health Government of Bihar, Patna.
3. Joint Secretary, Health Department, Government of Bihar, Patna.
4. Deputy Secretary, Health Department, Government of Bihar, Patna.
5. Director in Chief, Health Service, Government of Bihar, Patna.
6. Regional Deputy Director, Health Services, Patna Division, Patna.
7. Collector, Bhabhua.
8. Civil Surgeon Cum Medical Officer, Kaimur (Bhabhua) District-Bhabhua.
9. Dr. Awadhesh Kumar Das, S/o not Known to the Petitioner Medical Officer, E.P.H.C. Bamhow Sub-Divisional Hospital, Mohania.

... .. Respondents

**Appearance :**

For the Petitioner : Mr.Rajiv Kumar Singh  
For the Respondents : Mr.S.D. Yadav (AAG 9)

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 03-08-2021**

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. There appears to be a typographical mistake in describing the petitioner's name in the writ petition. Apparently, out of inadvertence, the petitioner's name has been typed as Dr. Chandeshwar Rajak in place of Dr. Chandeshwari Rajak.



3. Learned counsel for the petitioner has submitted that he may be permitted to correct the petitioner's name.

4. Let the petitioner's name be treated to be Dr. Chandeshwari Rajak for all purposes of the present writ application, as I am satisfied with the bonafide of the mistake on perusal of the documents on record.

5. Let necessary corrections be made in the cause title of the writ petition.

6. The petitioner is a member of Bihar Health Service. Briefly narrated the case of the petitioner is that while posted as Deputy Superintendent-cum-Drawing Disbursing Officer, Sub-Divisional Hospital, Mohania, under telephonic instruction of the Health Minister, Government of Bihar, he has been made to work as Medical Officer in the said hospital under an order dated 01.09.2020 issued by the Civil Surgeon-cum-Chief Medical Officer, Kaimur. By the said order he had been directed to give his charge to respondent no. 9. It is the petitioner's case that he is senior to respondent no. 9 in the cadre of Bihar Health Service and, therefore, he could not be compelled to work under an officer who is junior to the petitioner in the seniority list. The petitioner accordingly filed the present writ application seeking quashing of the said order dated 01.09.2020 issued by the Civil Surgeon-cum-



Chief Medical Officer (respondent no. 8). The petitioner has a grievance that an officer junior to him could not be made the petitioner's Drawing and Disbursing Officer. According to the impugned order issued at the oral direction of the Health Minister, Government of Bihar is arbitrary illegal and unsustainable. A seniority list has been brought on record by way of Annexure-5 to the writ application to demonstrate that the petitioner is senior to respondent no. 9.

7. The petitioner has relied on a letter dated 18.07.2019 issued by the Health Department, Government of Bihar addressed to the Civil Surgeon, Bihar wherein it has been specifically mentioned that in no circumstance, Doctors posted by the department at a particular place should be transferred and posted to a different place, at the local level nor they should be deputed without prior permission of the department. The said letter further prescribes that such Doctors whose services are placed under a surgency or those who are found in excess or those who joined after availing the study leave etc. in the surgency, they can be deputed/posted as per the requirement under intimation to the department. It is the petitioner's grievance that the action in issuing the order dated 01.09.2020 on the basis of telephonic



instruction of the Health Minister, Government of Bihar is in breach of the guidelines contained in the letter dated 18.07.2019.

8. This is undisputed that the petitioner's original posting was as Medical Officer at Additional Primary Health Center, Bahuara, Mohania (Kaimur) whereas respondent no. 9 was posted as Medical Officer at the Additional Primary Health Center, Bamhour (Kaimur). It is the petitioner's case that whereas the petitioner is posted at A.P.H.C., Bahuara since 14.11.2016, respondent no. 9 is posted at A.P.H.C., Bamhour since 12.11.2009. It is thus the petitioner's case that respondent no. 9 has remained posted in the District for more than 11 years.

9. When the matter was taken up by this Court on 07.10.2020, considering the fact that the petitioner had remained posted at Sub-Divisional Hospital, Mohania since 2016, the Court had made an observation that the respondents may consider transferring him from the said post to any other appropriate place in the meanwhile. The said observation was made, considering the petitioner's grievance that he has been made to work under a person, who is junior to him.

10. In response to the said observation, a supplementary counter affidavit has been filed on behalf of the State respondents sworn by the Additional Director, Health



Department, Government of Bihar from which, it transpires that the petitioner has been transferred from Additional Primary Health Center, Bahuara, Mohania Kaimur to Community Health Center, Karakat, Rohtas, as Medical Officer. A rejoinder affidavit has been filed on behalf of the petitioner stating therein that respondent no. 9, who is fairly junior to the petitioner, is posted since 12.11.2009 and has been given higher responsibility of In-charge Deputy Superintendent whereas the petitioner, who is Senior Medical Officer, has been transferred in a block level Community Health Center.

11. Mr. Rajiv Kumar Singh, learned counsel appearing on behalf of the petitioner has vehemently argued that keeping in mind the petitioner's seniority he could have been transferred and posted at Sub-Divisional level or District level but ignoring his claim, a person fairly junior has been given higher charge, which is illegal and arbitrary. He has drawn my attention to a notification dated 25.09.2000 issued by the Health Department, Government of Bihar in pursuance of certain orders passed by this Court in C.W.J.C. No. 4036 of 1999 (***Ram Prakash Kushwaha v. The State of Bihar and Others***) relating to transfer and posting of Medical Officers working in a District for ten years or more. He has submitted that the petitioner has been



discriminated against and inasmuch as he has been transferred nearly four and a half years after his posting, other Doctors who are posted in the District of Kaimur for longer period, have not been touched.

12. The petitioner has filed a representation dated 01.07.2021 addressed to the Principal Secretary, Health Department, Government of Bihar seeking stay of his transfer to Community Health Center, Karakat (Rohtas). He has contended that this Court should hold the action of the respondents in transferring the petitioner from one District to another on whimsical grounds to be illegal and arbitrary. He has also submitted that the Principal Secretary, Health Department, Government of Bihar be directed to dispose of the petitioner's representation against his transfer to Community Health Center, Karakat and till a final decision is taken on the petitioner's representation, the order of his transfer dated 30.06.2021, be stayed.

13. It is evident from the facts pleaded in the writ petition that the petitioner was posted by Government notification dated 30.06.2015 at A.P.H.C., Bahuara, Mohania in the District of Kaimur. Evidently, he was functioning as Deputy Superintendent-cum-Drawing and Disbursing Officer, Sub-Divisional Hospital,



Mohania by way of local arrangement. Dr. Awadhesh Kumar Das (respondent no. 9) was posted as Medical Officer at A.P.H.C., Bamhour (Kaimur), by notification dated 13.10.2009 and he also has been shown to be working in Sub-Divisional Hospital, Mohania, subsequently given the charge of Deputy Superintendent-cum-Drawing and Disbursing Officer of the said Sub-Divisional Hospital, Mohania apparently by way of local arrangement. There does not appear to be any notification issued by the State Government deputing either the petitioner or respondent no. 9 against any post at Sub-Divisional Hospital, Mohania. It is difficult for this Court on the basis of facts which are undisputed to discern as to how these arrangements were allowed to be made and the Doctors working in A.P.H.C. were made to work in Sub-Divisional Hospital without any State Government notification, contrary to their respective places of postings. It can be easily understood that the health service at Additional Primary Health Centers (A.P.H.Cs.) where the petitioner and respondent no. 9 were originally posted must have suffered because of the arrangement made at local level by deputing them in Sub-Divisional Hospitals. Secondly, the Court fails to understand the circumstance in which, the respondent no. 9 has been allowed to remain in the same district since 2009. The



petitioner has given the names of such Doctors in his representation, which has been brought on record by way of Annexure-16 to the writ application, who have remained posted in the District of Kaimur for period longer than the petitioner's period of posting in the said District.

14. The petitioner's plea that because of his seniority, he should have been given higher responsibility and at least responsibility equivalent to an officer junior to him, has not been duly addressed by the State respondents.

15. Be that as it may, it cannot be said that the petitioner has been able to make out a case that the post to which the petitioner has been posted by subsequent notification dated 30.06.2021 is an inferior charge, which could not have been given to the petitioner. It is settled principle that the Court exercising power of judicial review does not interfere with an order transferring a government servant from one place to another unless the same is found to be beyond jurisdiction, in breach of statutory provision or *malafide*. It is not the petitioner's case that with his posting at Community Health Center, Karakat, he will have to serve under any officer junior to him in the seniority list or in rank. Nothing has been shown to this Court on the basis of which it can be concluded that the said order is in breach of any



statutory provision. The challenge to the order dated 01.09.2020 issued by the Civil Surgeon-cum-Chief Medical Officer, Kaimur, which has lost its relevance after issuance of the subsequent notification dated 30.06.2021. The said notification dated 30.06.2021 is not under challenge in the present writ application.

16. Be that as it may, the petitioner may have a valid grievance of discrimination on the ground that Medical Officers have been allowed to continue for considerably longer period in a particular District and Officers junior to him have been given higher responsibility, which is humiliating and cause undue harassment.

17. In such view of the matter, this application is disposed of with a direction to the Principal Secretary, Health Department, Government of Bihar to consider the petitioner's representation dated 01.07.2021, which has been brought on record by way of Annexure 16 to the rejoinder filed on behalf of the petitioner to the State's supplementary counter affidavit and pass a reasoned order within a period of two months from the date of receipt/production of a copy of this order.

18. The Principal Secretary, Health Department, Government of Bihar will be under an obligation to record in his order, reasons why, Medical Officers have been allowed to remain



posted in a District for several years, as mentioned in the said representation. Further, the Principal Secretary, Health Department, Government of Bihar should also be under obligation to discuss in his speaking order, the petitioner's claim of getting higher responsibility at least, equivalent to such medical officers who that have been assigned to Medical Officers junior to him.

19. This application stands disposed of.

20. It is made clear that I have not interfered with the transfer notification dated 30.06.2021 and accordingly the petitioner shall not wait for disposal of the representation, for the purpose of joining the place of his posting.

**(Chakradhari Sharan Singh, J)**

AKASH/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 06.08.2021 |
| Transmission Date | N/A        |

