

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10812 of 2017

-
1. Gopaljee Anand and Anr Son of Sri Surendra Prasad resident of Mohalla - Mahajan Toli, Sasaram, Police Station - Sasaram, District - Rohtas.
 2. Satya Narayan Singh Yadav Son of Sri Sheo Pujan Singh resident of mohalla - Bhartiganj, Police Station - Sasaram, District - Rohtas.

... .. Petitioners

Versus

1. The State Of Bihar and Ors
2. The Director-in-Chief Health Services, Bihar, Patna having its office in Vikas Bhawan, Police Station, Sachivalaya, District-Patna.
3. The District Magistrate, Rohtas, having its office in Collectorate Sasaram, District - Rohtas.
4. The Regional Deputy Director, Health Services, Patna Division, Patna having its office in Swastha Bbhawan, Sultanganj, District-Patna.
5. The Chief Medical Officer-cum-Civil Surgeon, Rohtas in the town of Sasaram in the District of Rohtas.

... .. Respondents

Appearance :

For the Petitioners : Mr.Tripurari Nath Ambastha
For the Respondents : Mr.S.D. Yadav (AAG 9)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 12-07-2021

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

2. The profound apathy of the State respondents in considering the case of the petitioners in terms of a policy decision of the Government of India for rehabilitation of erstwhile leprosy patients after their cure is appalling. It is more than 21 years for which the petitioners are fighting against the State respondents for



consideration of the claims under the said policy decision of the Government of India dated 14.06.1982 for rehabilitation of erstwhile leprosy patients to enable them to live as a normal person in the society in order to rehabilitate them after their cure.

3. It is noteworthy that as a measure of leprosy control and rehabilitation, it was decided that all posts belonging to category D in all the National Leprosy Eradication (Control) Programme Units should be preferably filled up with cured leprosy patients with requisite qualification and capability.

4. Facts in the present case are not at all in dispute, as is evident from the counter affidavit filed on behalf of respondent no. 5 (the Chief Medical Officer-cum-Civil Surgeon, Rohtas). Admittedly the petitioners were suffering from leprosy and were cured by the treatment. The counter affidavit filed on behalf of the Civil Surgeon, Rohtas discloses that it was decided that all posts belonging to category D in all National Leprosy Eradication (Control) Programme Units should be preferably filled in by cured leprosy patients, which decision was communicated to all concerned authorities through letter issued by the Directorate, Health, Bihar vide Memo. No. 987(11) dated 16.08.1982. In a subsequent letter issued vide Memo No. 42(ii) dated 10.01.2011, the Director-in-Chief communicated the decision of the State



Government to the effect that only such persons shall be rehabilitated and appointed who are completely healthy and cured of leprosy. The counter affidavit itself admits that the petitioners are leprosy cured patients.

5. It appears from an order of this Court dated 27.03.2009 passed in C.W.J.C. No. 4597 of 2000, which was apparently filed by these petitioners that on 29.11.1994, the Additional Collector, Rohtas had forwarded their applications to Civil Surgeon-cum-Chief Medical Officer, Rohtas at Sasaram with a request for consideration by a committee constituted for the purpose, in the light of the said policy decision of the Government of India.

6. There being complete inaction on the part of the respondents, the petitioners were forced to approach this Court by filing a writ application, which gave rise to the aforementioned C.W.J.C. No. 4597 of 2000. The said writ application was disposed of by an order of this Court dated 27.03.2009 with a direction to the respondents for consideration of the petitioners' case for appointment on Class IV posts in Leprosy Eradication (Control) Programme Units in terms of the instructions of the Government of India dated 14.06.1982 in the Ministry of Health and Family Welfare. The Court directed the respondents to take an appropriate



decision in accordance with law within a maximum period of three months from the date of receipt and/or production of a copy of said order before respondent no. 1 of that case. The Court further observed that should the respondents propose to deny the benefits of policy decision dated 14.06.1982 to the petitioners, they would be required to pass a reasoned and speaking order only after furnishing to the petitioners, the materials on which they proposed to rely to deny the relief and granting adequate opportunity including personal hearing to the petitioners. While issuing aforesaid direction, the Court in its order dated 27.03.2009 observed as under:-

“The Government of India formulated a social welfare scheme. This scheme was only in furtherance of the goals to the Indian Constitution promising social justice more specifically incorporated in Article 38 of Chapter IV of the Constitution dealing with directive principles of State policy. In other words, a routine administrative matter for implementation of social welfare schemes, a constitutional duty of the respondents, was thrown to the winds by them. The petitioners had to come to this Court seeking relief. The institution of the writ application also did not arouse the conscience of the respondents towards their constitutional duties. Despite two opportunities with the



exception of respondent no. 5 no counter affidavit has been filed.

Not only have the concerned respondents shown unconcern for the constitutional goals to the plight of the petitioners, lastly their conscience has refused to be aroused even after institution of the writ application. An administrative issue has been thrust upon the High Court for adjudication in exercise of powers under Article 226 of the Constitution of India. The issue for adjudication is why the administrative powers are not being exercised. The respondents still refuse to answer the same.”

7. As the respondents failed to comply with the judicial order of this Court dated 23.07.2009, the petitioners were forced to approach this Court by filing a petition for initiation of contempt proceeding against the respondents, which gave rise to M.J.C. No. 1652 of 2010. The said contempt application was disposed of by an order dated 23.02.2011, a copy of which has been brought on record by way of Annexure-2 to this application from which, it transpires that a stand was taken on behalf of the State of Bihar that the petitioners had been found fit for appointment by the Medical Board and their cases had been forwarded to the District Magistrate for further action. The Court recorded its expectation that a final decision in terms of direction in the writ petition shall



be taken within a period of three weeks from the date of receipt/production of a copy of this order. It was further observed that if the petitioners had to approach this Court again, the matter might be viewed rather seriously by the Court. Neither the strong observations made by this Court in the order dated 27.03.2009 passed in C.W.J.C. No. 4597 of 2020 nor the indication in the order dated 23.02.2011 passed in M.J.C. No. 1652 of 2010 made the respondents act in right earnest, thus compelling the petitioners approach this Court again by filing another contempt application, which was disposed of by an order dated 12.10.2011 passed in M.J.C. No. 2954 of 2011. It appears that the Court noted Annexure-D to the show cause reply filed on behalf of the State of Bihar, which disclosed that the petitioners had been empaneled for such consideration.

8. Complaining complete inaction on the part of the respondents despite orders of this Court, present writ application has been filed by the petitioners, for a direction commanding the respondents to appoint them on Class IV posts in the office of Health Department, in the District of Rohtas, in the light of letter no. 4/Mu dated 19.08.2011 issued by the District Magistrate, Rohtas (Annexure-3).



9. In the counter affidavit filed on behalf of the State of Bihar, a communication dated 25.02.2011 made by the Civil Surgeon-cum-Chief Medical Officer, Rohtas addressed to the Deputy Collector (legal), Rohtas has been brought on record by way of Annexure-A, which was apparently in relation to filing a show cause before this Court in the contempt proceeding whereby a request was made for inclusion of these petitioners in a panel for appointment against the Class IV posts. The respondents are completely silent as to what action has been taken after inclusion of the names of these petitioners in the panel for appointment. There is no whisper in the counter affidavit of the respondents, as to whether any action has been taken so far for furthering the policy decision of the Government of India dated 14.06.1982 taken for rehabilitation of erstwhile leprosy patients so as to enable them to live as normal persons in the society after their cure. It is reiterated that under the said policy decision dated 14.06.1982 preference was required to be given against category D posts in all the National Leprosy (Control) Programme Units. There is no mention in the counter affidavit, as to whether while making appointment against Group D posts in National Leprosy Eradication (Control) Programme Units, preference has been given to cured leprosy patients. For last 21 years, the petitioners have



been made to run from pillar to post without any definite decision by the respondents regarding their appointment against Group D posts in National Leprosy Eradication (Control) Programme Unit.

10. In normal situation, I would have directed the respondents to consider the cases of these petitioners in the light of their empanelment, for their appointment against Group D posts in the National Leprosy Eradication (Control) Programme Unit. In the present case, the respondents have not denied the petitioners' right of being considered for appointment against Group D post in National Leprosy Eradication (Control) Programme Unit on preferential basis in the light of policy decision of the Government of India, as noted above. The deafening silence on the part of the respondents relating to existence of Group D posts in National Leprosy Eradication (Control) Programme Unit is quite disturbing. The facts of the present case, as noted above, do portray an unusual circumstance created by the State Respondents. The situation which has emerged from the aforesaid facts makes me notice the Supreme Court's decision in case of *Hari Krishna Mandir Trust v. State of Maharashtra* reported in (2020) 9 SCC 356 (see para 102) wherein the Court has laid down that in appropriate cases, in order to prevent injustice to the parties, the court may itself pass an order or give directions, which the



government of public authorities could have passed, had it properly and lawfully exercised its discretion.

11. Accordingly, I hereby direct the Director-in-Chief Health Services, Government of Bihar (respondent no. 2), The District Magistrate, Rohtas (respondent no. 3) and The Chief Medical Officer-cum-Civil Surgeon, Rohtas (respondent no. 5) to identify vacant Group D in Leprosy Eradication (Control) Programme Unit in the District of Rohtas and in case Group D posts are found vacant, appoint the petitioners forthwith. In any case, if such posts are vacant, appointment letters must be issued to the petitioners within four weeks from the date of receipt/production of a copy of this order.

12. This writ application stands allowed with the aforesaid directions and observations.

13. List this matter on 23.08.2021 under the heading “To be Mentioned” to report compliance of the order.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	20.07.2021
Transmission Date	N/A

