

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.738 of 2022

Dr. Kavindra Prasad Singh @ Rabindra Prasad Singh Son of Late Rameshwar Singh Resident of Sanju Nivas, Ram Jaipal Nagar Colony, Nasriganj, Police Station-Danapur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
3. The Under Secretary, Health Department, Govt. of Bihar, Patna.
4. The Regional Additional Director, Health Services, Magadh Division, Gaya.
5. The Civil Surgeon, Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Advocate Mr. Manik Vedsen, Advocate Mr. Pawan Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG 9 Mr. Prem Ranjan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 19-05-2022

Heard learned counsel for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

i. For quashing the enquiry report contained in Memo No. 042 dated 25.09.2014 whereby and where under the Charge No. 1 and 2 have been proved.

ii. For quashing the Resolution bearing Memo No. 1102 (9) dated 20.12.2021 issued under the signature of the Joint Secretary, Health Department, Bihar, Patna whereby and where under the petitioner has been visited with the punishment of compulsory retirement.



iii. For direction upon the respondent authorities to reinstate the petitioner in services with all consequential monetary benefits and allow him to attain the age of superannuation i.e. 67 years.

iv. For declaration by the Hon'ble Court that the proceeding from the stage of enquiry upto the punishment order is in breach of mandatory provisions contained in Bihar C.C.A. Rules, 2005.

v. For any othe relief/reliefs to which the petitioner may be entitled to.

3. The petitioner while working in the Health Department, he was subjected to disciplinary proceedings pursuant to preliminary enquiry report dated 25.09.2014 read with 20.12.2021. Based on the preliminary enquiry report, charge memo was issued on 22.02.2011. Thereafter, show cause notice was issued on 28.01.2013. The second show cause notice along with the Enquiring Officer's report was furnished to the petitioner on 10.08.2016 for which petitioner had submitted reply on 21.02.2017. Thereafter on 20.12.2021, State – respondent imposed one of the major penalty namely compulsory retirement. Thus, the petitioner has presented this petition.

4. On 16.05.2022, the following order was passed:

“Heard learned counsel for the respective parties.

State counsel is unable to assist this Court.

Therefore, the second respondent i.e. Joint Secretary,

Health Department, Govt. Of Bihar, Patna is hereby



directed to appear in person on the next date of hearing.

He has to apprise this Court as to whether is there any compliance of sub-rule (4) of Rule 17 of Bihar Government (Classification, Control and Appeal) Rules, 2005 or not?

Re-list this matter on 19.05.2022.”

5. Today Mr. Ram Ishwar, Joint Secretary, Health Department is present in the Court. With reference to record it is submitted that there is a non compliance of sub-rule (4) of Rule 17 of Bihar Government (Classification, Control and Appeal) Rules, 2005.

6. In the light of the aforesaid submission, the petitioner has made out a *prima facie* case so as to interfere with the penalty of compulsory retirement. Accordingly, the order of penalty of compulsory retirement is set aside and matter is remanded to hold and complete enquiry from the defective stage within a period of three months from the date of receipt of this order.

7. At this juncture, learned counsel for the petitioner vehemently contended that in order to deny promotion to the post of Additional Chief Medical Officer in the month of December, 2021, the respondents have passed the impugned penalty order in hurriedly manner. He has pointed out that the charge memo was issued in the year 2011 whereas the penalty order was imposed on



20.12.2021. It is submitted that in order to avoid giving promotion to the petitioner to the post of Additional Chief Medical Officer, the State respondent have taken a decision on 20.12.2021 to retire petitioner compulsorily as a major of penalty. In the light of the aforesaid submission the State respondent is hereby directed to promote the petitioner to the post of Additional Chief Medical Officer on *ad hoc* basis subject to outcome of the disciplinary proceedings to be continued and concluded by the respondent. For the reasons that initiation of charge memo is in the year 2011 and it was concluded only on 20.12.2021, therefore, the state respondent are hereby directed to take appropriate steps to promote the petitioner to the post of Additional Chief Medical Officer on *ad hoc* basis within a period of one month from the date of receipt of this order for the reasons that the petitioner is due for retirement in the normal course in the month of November, 2022.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	

