

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1173 of 2018

In
Civil Writ Jurisdiction Case No.7617 of 2015

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Jagannath Jha Son of Late Achuta Nand Jha Resident of Village-Tatuar Police Station-Manigachi, District-Darbhangha.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary Department of Health, Govt. of Bihar, Patna.
2. Under Secretary Health Services, Government of Bihar, Patna.
3. State Leprosy Officer, Bihar Patna.
4. Regional Deputy Director, Health Services, Kosi Division, Saharsa.
5. The Civil Surgeon-Cum-Chief Medical Officer Saharsa.
6. The Additional Chief Medical Officer Saharsa D D O.
7. The District Leprosy Officer Saharsa.
8. Dr. Bhola Nath Jha Son of not Known at Present Posted as Civil Surgeon-Cum-Chief Medical Officer Saharsa.
9. Sri Ganesh Prasad, Son of Not Known, Head Clerk in the Office of the Civil Surgeon-Cum-Chief Medical Officer Saharsa.
10. Director-in-Chief, Health Services, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raja Ram Mishra, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG-9
		Mr. Prem Ranjan Kumar, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-09-2022

Heard learned counsels for parties.

2. Pursuant to order dated 25.08.2022, Mr. (Dr.)

Kishor Kumar Madhup, Civil Surgeon-cum-Chief Medical Officer, Saharsa is present in the Court.



3. The appellant Jagannath Jha was initially appointed as a clerk on 12.08.1983. The official respondent noticed certain irregularities in appointment of appellant among large number of persons, in the result, official respondent proceeded to terminate the services of the appellant among others and it was subject-matter of litigation before this court. This court directed the official respondents to constitute a committee and to take a decision whether such of those terminated employees and their initial appointment was irregular, illegal or on account of forged documents. The committee is stated to have submitted report on 09.09.2008. The appellant's case would fall under the category of production of forged documents. The appointing authority to the appellant on receipt of committee's report on 09.09.2008 slept over the matter and permitted appellant to continue in service till 31.01.2015, the date on which he attained the age of superannuation. In this backdrop, question for consideration is whether the appellant is entitled to retiral benefits or not? The learned single Judge has committed error for the reasons that as on 31.01.2015, the appointing authority has not taken any action to terminate the services of the appellant. Even to this day there is inaction on the part of the appointing authority pursuant to the committee's report dated 09.09.2008. Civil Surgeon- cum- Chief



Medical Officer, Mr. (Dr.) Kishor Kumar Madhup was summoned. He had given instruction to the State counsel that there is inaction on the part of the official respondents in not taking any action pursuant to the committee's report dated 09.09.2008. The same has taken on record. At this distance of time it is not appropriate to take a decision based on the report for the reasons that official respondents cannot terminate the services of the appellant as he has already attained age of superannuation on 31.01.2015. That apart, disciplinary proceedings cannot be initiated on the alleged allegation that appellant had produced fake documents at the time of his initial appointment in the year 1983 and further to deduct/cut his pension and it is not permissible in the light of Bihar Pension Rules which prohibit taking any action in respect of 4 years old alleged incident. In the present case, the alleged incident is stated to be on 12.08.1983, the date on which appellant was appointed.

4. Accordingly, the concerned official respondent is hereby directed to fix the pay of the petitioner from time to time and extend all increments, time bound promotion, ACP/MACP and thereafter re-fix his pension if he is otherwise, eligible in terms of Bihar Pension Rules. The same shall be



calculated from time to time and disbursed the same in favour of the appellant within a period of four months from the date of receipt of this order, failing which appellant is entitled to interest on all arrears of amount at the rate of 6% *per annum* including litigation cost and it is quantified @ Rs. 25000/-

5. Perusal of the records, it is evident that official respondents like, Civil Surgeon-cum-Chief Medical Officer, Saharsa, there is total lapse in not taking any action pursuant to the committee's report dated 09.09.2008. Therefore, disciplinary authority to the post of Civil Surgeon-cum-Chief Medical Officer is hereby directed to take disciplinary action to such of those Civil Surgeon-cum-Chief Medical Officer, Saharsa who held the post during the period from 09.09.2008, till January, 2015. If they are in service or retired, necessary action shall be taken under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 read with Bihar Pension Rules and conclude the same within a period of six months from the date of receipt of this order. The concerned Civil Surgeon-cum-Chief Medical Officer should be given ample opportunity under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 to defend their action. Such action taken by the disciplinary authority shall be placed on record after six months



in the registry.

6. Accordingly, order of the learned single Judge dated 20.07.2018 passed in C.W.J.C. No. 7617 of 2015 is set aside. Present L.P.A stands disposed of.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
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