

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10581 of 2020

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Md. Fakhir Usmani S/o- Md. Salim Resident of Mohalla- Dumduma, P.O. and
P.S.- Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Govt. of Bihar, Patna.
2. The Director in Chief, Health Service, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Govt. of Bihar,
Patna.
4. The Director, Department of Health, Govt. of Bihar, Patna.
5. The Superintendent, Darbhanga Medical College Hospital, Laheriasarai,
Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nafisuzzoha, Advocate
For the Respondent/s : Mr. S.D. Yasav, AAG-9

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

Date : 11-01-2022

The matter is heard via video conferencing due to
circumstances prevailing on account of the COVID-19
pandemic.

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

“a. For issuance of a writ in the
nature of certiorari or any other appropriate
writ order and direction commanding the
Respondents for quashing the office order
dated 05-07-2020 contained in Memo No. 2513
passed/ issued by the Superintendent,
Darbhanga Medical College Hospital,
Laheriasarai, Darbhanga (Resp. No. 5)



whereby where under the superintendent (Resp. No. 5) removed the petitioner from his service in the period of covid 19 who was working on the post of O.T. Assistant in D.M.C.H., Laheriasarai since 13-07-2010 and cancelled the contract arbitrarily.

b. Any other appropriate relief or reliefs may granted in favour of the petitioner as your lordship may deem fit and proper.

c. During the pendency of the writ application the petitioner be allowed to remain continue in his service and to perform his duty as O.T. Assistant in D.M.C.H., Laheriasarai.”

3. The petitioner without exhausting statutory remedy of appeal presented this petition.

4. Therefore, the present petition is pre-mature to entertain in the light of Apex Court decision in the case of State of *Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at para 20 held as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 if duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;



- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

5. Accordingly, the present petition stands disposed of reserving liberty to the petitioner to prefer appeal before the appellate authority. If such appeal is filed within a period of eight weeks from the date of receipt of this order, the same shall be decided by the appellate authority within a period of four months from the date of receipt of petitioner’s appeal.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

