

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.662 of 2021

In
Civil Writ Jurisdiction Case No.21222 of 2018

=====

MADAN MOHAN SHARMA son of Late Awadh Bihari Sharma resident of
C/o- Subodh Kumar, Maruti Niwas, Adarsh Colony, Blooming Rose Public
School, Maurya Vihar, Transport Nagar, Police Station- Agamkuan, District-
Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna namely Sri Pratyaya Amrit.
2. The Director-in-chief, Health Services, Government of Bihar, Patna namely
Dr. Ashok Kumar.
3. The Director-in-chief (Adminsitration), Health Services, Government of
Bihar, Patna namely Dr. Ashok Kumar
4. The Superintendent, Patna Medical College and Hospital, Patna namely Dr.
Vimal Karak.
5. The Deputy Superintendent -I Patna Medical College and Hospital, Patna
namely Dr. Seema Sinha

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No.-II, Advocate
		Mr. Gajendra Kumar Singh, Advocate
For the Opposite Party/s :		Mr. Ravi Kumar, AC to GP-13

=====

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

Date : 11-05-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

Learned counsel for the petitioner submits that the present
contempt application has been filed alleging violation of the order
dated 29.07.2019 in C.W.J.C. No. 21222 of 2018. It is further
submitted that the petitioner was transferred to the Sub-Divisional
Hospital, Phulparas in the district of Darbhanga in the year 2018 but
there is no Sub-Divisional Hospital, Phulparas in the district of



Darbhanga rather there is a Sub-Divisional Hospital, Phulparas in the district of Madhubani.

Learned counsel submits that since the order by which the petitioner was transferred to the Sub-Divisional Hospital, Phulparas in the district of Darbhanga and no such Sub-Divisional Hospital was existing, as such, he could not join and despite his best endeavour the authorities were not willing to rectify his order of transfer, as such, the petitioner approached this Court by filing C.W.J.C. No. 21222 of 2018. Learned counsel submits that C.W.J.C. No. 21222 of 2018 was disposed of by order dated 29.07.2019 whereby this Court directed the Director-in-Chief (Administration), Health Services, Government of Bihar, Patna to make necessary correction in the memo no. 1184(4) dated 29.09.2018 in the matter of place of posting of the petitioner by correcting the District where the Sub-Divisional Hospital, Phulparas is situated and hand over the corrected copy of the order to the petitioner within a period of two weeks from the date of receipt/production of a copy of this order.

Learned counsel submits that for such a trivial issue, the petitioner had to approach this Court and this Hon'ble Court in 2019 itself had disposed of the writ application but then the order of the learned Writ Court was not complied nor the order of transfer was rectified to read as Sub-Divisional Hospital, Phulparas, Madhubani instead of Sub-Divisional Hospital, Phulparas, Darbhanga.



The submission made by the learned counsel for the petitioner on the face of the record appears to be very attractive but when the Court sees the date of filing of the contempt application, it appears that the contempt application was filed on 19.02.2021 i.e. after more than one and half years of the passing of the order by the learned Writ Court when the learned Writ Court had clearly directed the authorities to comply the order within a period of two weeks.

The Court fails to appreciate that if the order of the learned Writ Court was not complied within two weeks why the petitioner instantly did not file a contempt application. This gives an impression that the motive was ulterior as the petitioner was not interested in going to Madhubani or else he would have approached the Court immediately.

Now when a show cause on behalf of the opposite party no. 3 has been filed, from perusal of the same it manifests that memo no. 1299(4), dated 10.10.2018 (Annexure-A to the supplementary show cause) was issued rectifying the said mistake which was committed earlier as recorded hereinabove.

Learned counsel for the petitioner rebuts the submission of the learned counsel for the State and submits that if what has been pleaded in the show cause of the opposite party no. 3 is correct then the same should also ought to have been pleaded in the counter affidavit filed in the writ application but then the same was not done.



The Court fails to appreciate this submission of the learned counsel for the petitioner for the reason that if the State on affidavit in the show cause has clearly pleaded that the mistake committed earlier was rectified by the aforesaid memo and the said fact could not be pleaded in the counter affidavit then how the same comes to the benefit of the petitioner.

This is yet another aspect of the matter which clearly reflects that the petitioner is just trying to hoodwink the authorities including the Court as he was not willing to join the place of posting as he is retiring in February, 2024 and thus buying time.

Learned counsel for the State, at this stage, submits that a supplementary show cause on behalf of the opposite party no. 3 has also been filed in which it has been specifically pleaded at para 10 that for making payment of salary for the period from 29.09.2018 to 10.10.2018 the decision is to be taken by the Superintendent, PMCH, Patna where he was working earlier from where he was transferred to Madhubani. Learned counsel further submits that he has also received instruction from the department contained in letter no. 375 dated 14.10.2022 issued by the Deputy Superintendent, Sub-Divisional Hospital, Phulparas, Madhubani to submit that petitioner till date has not joined the hospital.

The Court fails to appreciate that when the show cause on behalf of the State was filed on 12.10.2022 and the said fact came to



the notice of the petitioner that the said rectification was done in the year 2018 itself then also by virtue of Annexure-A to the supplementary show cause why the petitioner did not submit his joining in the said Sub-Divisional Hospital.

Had it been a case of the petitioner that even after Annexure-A, which came to his notice subsequently, he was not allowed to join then perhaps the Court would have taken a different view but conduct of the petitioner does not appear to be fair, as such, the Court is not inclined to proceed with the contempt application.

Accordingly, the contempt application is dismissed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2023
Transmission Date	

