

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8325 of 2019

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Rajesh Ranjan son of Chhedi Prasad Choudhary resident of D.B. Road,
Anurag Gali, Ward No. 10, Police Station- Saharsa, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. Bihar AIDS Control Society through the Project Director, State Health and Family Welfare Organization Buiding, Sheikhpura, Patna.
3. The Project, Bihar AIDS Control Society, State Health and Family Welfare Organization Buiding, Sheikhpura, Patna.
4. Joint Director, District AIDS Prevention and Control Unit, Bihar AIDS Control Society, State Health and Family Welfare Organization Buiding, Sheikhpura, Patna.
5. In- Charge (Establishment), Bihar AIDS Control Society, State Health and Family Welfare Organization Buiding, Sheikhpura, Patna.
6. The Civil Surgeon-cum- Chief Medical Officer, Araria.
7. The Additional Chief Medical Officer-cum- AIDS Control Officer, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Adv. Mr. Bam Bahadur Jha, Adv.
For the State	:	Mr. Mujtabul Haque, Gp-12 Mr. Manish Kumar, (AC to GP-12)
For the Respondent Nos.: 2 to 5	:	Mr. Sanjiv Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 09-10-2023

Heard learned counsel for the petitioner, learned
counsel for the Bihar AIDS Control Society and learned counsel
for the State.

2. The present writ application has been filed for
acceptance of the joining of the petitioner on the post of M & E
Assistant at the District AIDS Prevention & Control Unit
(DAPCU), Araria from 25.01.2019.

3. Learned counsel for the petitioner submits that the petitioner was appointed by virtue of the appointment letter which is Annexure- 2, letter no. 3909 dated 17.02.2014 on contractual basis for initial period of one year. Counsel submits that the Office Order No. 381 dated 04.03.2014 has been issued that the said appointment shall run according to the terms of contract which was subject to extension from time to time. The terms of agreement is annexed as Annexure- 7.

4. Learned counsel for the petitioner further submits that after the said appointment, the petitioner has joined and started working *w.e.f.* 07.03.2014 to the satisfaction of the employer. The contractual service of the petitioner was extended time to time and vide Office Order No. 2305 dated 23.03.2018, the service of the petitioner was extended from 01.04.2018 to 31.03.2019.

5. Learned counsel for the petitioner further submits that the petitioner was working under the Additional Chief Medical-cum-District AIDS Control Officer, Araria who was the Controlling Officer of the petitioner and due to the illness of his father, he has applied for leave on 06.09.2018. Vide Annexure- 8, it transpires that his leave was recommended to the Reporting Officer on 07.09.2018. Counsel further submits

that due to continuous illness of his father, he further applied for leave and vide Annexure- 9, he has also filed application for extension.

6. After treatment of his father, he has returned and applied before the Additional Chief Medical-cum-District AIDS Control Officer, Araria to accept his joining vide his letter bearing Memo No. 65 dated 25.01.2019 but his joining was not accepted. He again filed another representation vide Annexure- 11 on 31.01.2019 and further on 07.03.2019 but his joining was not accepted, thereafter he moved before this Hon'ble Court.

7. The stand of the petitioner is that as per the terms of contract, he is entitled for 30 days earned leave, 10 days sick leave, apart from other leaves public holidays, as per the clause- 13 of the service agreement but there was no consideration made on his leave application and respondents are not accepting the joining without taking any decision on his leave application, therefore, he preferred the present writ petition.

8. Learned counsel for the respondent-State has filed reply and submits that forwarding letters were communicated to the Joint Director, C.S.T.-cum-Incharge, DAPCU, Bihar State AIDS Control Society, Patna in the matter of petitioner's five times vide Annexure- A to Annexure- E but

there was no response made at the level of the Officials of DAPCU.

9. Learned counsel for the Bihar State AIDS Control Society submits that as per clause-24 of the agreement, absence of any person who is employed on contract basis without justification for continuous period of three days including absence, when leave though applied for, is not granted or when over stay for more than three days, would entail termination of service without any notice of intimation by the management.

10. Learned counsel for the Bihar State AIDS Control Society further submits that it is completely a contractual agreement and as a matter of claim, services cannot be acted upon. Upon the specific query of the Court that according to clause-13 of the agreement, the leave was provided and leave has to be allowed with prior permission of the Deputy Director or the designated authority of the Bihar State AIDS Control Society upon forwarding by the evolution officer/controlling officer. It has also been mentioned that leave may not be claimed as a matter of right.

11. But here in the present case, counsel for the Bihar State AIDS Control Society submits that Annexure- 8 has

never been forwarded before the Society. As such, no decision could be taken place in the matter of the petitioner.

12. In this background, this Court is of the view that the petitioner is never at fault. He has rightly applied for leave as per clause-13 of the contract before the Controlling Authority who has recommended the matter and if the matter has not been forwarded before the person granting leave to the petitioner, he is not held liable.

13. Learned counsel for the respondent-State also submits that by different letters, communications made to the Society and the Society has not taken any decision at his level and instead thereof, the Society wants to take benefit of clause-14, *i.e.* absence.

14. In this background, this Court is of the view that such situation cannot be treated absence under clause-24 and, therefore, no question of termination according to clause-24 shall apply in the present case, particularly, when there are inaction itself on the part of the respondent-Society. From the answers filed by the respondent-Society as well as the State, there is no such allegation against the petitioner that his performance is bad. Under extreme circumstances, when his father was ill and for the treatment of his father, he has applied

for the leave and immediately after coming from treatment, he went for joining which has not been accepted, then he came before this Hon’ble Court.

15. In this background, the respondent-Society is directed to accept the joining of the petitioner within two weeks’ from the date of production of the order. It is also directed to the respondent’s-Society and its Officials to take decision on the leave. If the petitioner is absent for the period more than the leave period, then during that period, no payment shall be made but after acceptance of joining, his payment shall be started.

16. With this direction, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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