

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20348 of 2011

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MADHU KUMARI W/O Sri Awadhesh Kumar R/V - Pura, P.S. And P.O.-
Wazirganj, Distt.- Gaya

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Secretary Health And Family Welfare Department, Govt. Of Bihar,
Patna
3. The Director-In-Chief Health Services, Bihar, Patna
4. The Executive Director, State Health Society, Bihar, Patna
5. The Regional Deputy Director Health Services, Magadh Division, Gaya
6. The Civil Surgeon-Cum-Chief Medical Officer, Gaya
7. The Civil Surgeon Cum Secretary District Health Society, Gaya
8. The Incharge Medical Officer, Primary Health Centre, Wazirganj, Gaya
9. The Senior A.N.M., Health Sub Centre, Kurkihar, Wazirganj, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shailesh Kumar, Advocate
For the Respondent/s : Mr.Anirban Kundu, S.C.-24

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 14-02-2023 Heard learned counsel for the petitioner and

learned counsel for the respondents.

Petitioner in the present case is seeking a writ in

the nature of writ of mandamus commanding the

respondents especially respondent nos. 7 to 9 to pay the

arrears of salary and current salary of the petitioner for the

period December, 2009 and from August, 2010 to the date

of filing of the writ application. Further prayer of the



petitioner is to allow her to make her attendance in the Attendance Register which according to the petitioner has been illegally withheld from her after institution of a criminal case on 13.05.2011.

Learned counsel for the petitioner submits that the petitioner was engaged as an Auxiliary Nurse Mid-wifery (hereinafter referred to as the 'A.N.M.') by Memo No. 425 dated 28.06.2008 (Annexure '6' to the writ application) at the Health Sub-Centre, Kurkihar in the district of Gaya on honorarium post.

Learned counsel submits that her engagement was further continued vide Memo No. 398 dated 27.08.2009 (Annexure '7' to the writ application) for a period of three years. It is during this period that the petitioner was deprived of making her attendance and has not been paid her honorarium.

Learned counsel submits that one First Information Report giving rise to Wajirganj P.S. Case No. 97 of 2011 has been registered for the offences alleged under Section 420 of the Indian Penal Code. It is alleged that this petitioner had produced forged certificate of



registration said to have been issued by Bihar Nursing Registration Council and she had submitted a forged marksheet issued By Indian Institute of Medical Technology, Calcutta. Learned counsel submits that only by filing a First Information Report the petitioner cannot be held guilty and in all fairness the respondents should have allowed the petitioner to continue with her work in terms of Annexure '8' to the writ application. It is his submission that the petitioner was wrongly deprived from marking her attendance, therefore, she would be entitled for the honorarium for the full period of her contractual engagement.

Although, in course of argument, learned counsel for the petitioner sought to extend his argument so as to contend that her subsequent disengagement or non-renewal of the contractual engagement is not justified, this Court finds that this aspect of the matter need not be gone into because there is neither any prayer in terms thereof nor any pleading to that effect available on the record.

Learned counsel for the State has drawn the attention of this Court towards the statement made in the



counter affidavit. It is submitted that in initial inquiry by the department the certificate of registration said to have been issued by the Bihar Nurses Registration Council, Patna and the marksheet produced by the petitioner allegedly issued by Indian Institute of Medical Technology, Calcutta have been found forged. It is for this reason that a criminal case had been registered and in course of investigation Police having found sufficient materials to proceed against the petitioner has submitted a charge-sheet against her. The case is still pending consideration.

Learned counsel, therefore, submits that in these circumstances, this writ application has lost its efficacy and no direction need be issued to the respondents.

Having heard learned counsel for the petitioner and the learned counsel for the State, this Court is of the considered opinion that during the pendency of the criminal case no direction may be issued for payment of honorarium to the petitioner for the period during which she has not been allowed to mark her attendance as alleged. If the petitioner comes out honourably from the said criminal case, her submission to the extent that she had been



wrongly deprived from making her attendance hence, she would be entitled for her salary of the said period may be considered at appropriate stage. The fact remains that her engagement vide Annexure '8' has already come to an end on expiry of three years. Admittedly, her engagement was not extended thereafter. In these circumstances, no further consideration need be given to this case. The issue of salary for the given period is left open to be considered at appropriate stage if the petitioner is honourably acquitted in the criminal case.

This writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

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