

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12756 of 2021

1. Ram Niwas Sharma Son of Rajendra Sharma Resident of Village- Kutlupr, P.S.- Alipur, District- Gaya at present posted as Sweeper Community Health Centre, Barachatty, Gaya.
2. Rakesh Singh Son of Chandeshwar Singh Resident of Village- Bara, P.S.- Tekari, District- Gaya at present posted as Health worker at Community Health Centre Mahkar Khizarsarai, Gaya.
3. Satyendra Kumar Son of Suresh Singh Resident of Village- Madhuban, P.S.- Madhuban, District- Giridih (Jharkhand), at present posted as Peon at Community Health Centre, Mohanpur, Gaya.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Services, Government of Bihar, Patna.
2. The Director, Health Services, Bihar, Patna.
3. The Regional Deputy Director, Health Services, Magadh Division, Gaya.
4. The District Magistrate, Gaya.
5. The Civil Surgeon-cum-Chief Medical Officer, Gaya.
6. The In-charge Medical Officer, Primary Health Centre, Gaya.
7. The In-charge Medical Officer, Community Health Centre, Barachatty, Gaya.
8. The In-charge Medical Officer, Community Health Centre, Mahkar, Khizarsarai, Gaya.
9. The In-charge Medical Officer, Community Health Centre, Mohanpur, Gaya.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Binod Kumar, Advocate
For the Respondent/s : Mr.Niraj Kumar, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-03-2023 Learned counsel for the petitioners undertakes to remove the defects, if any, within two weeks from today.

2. Subject to above undertaking, this Court has heard learned counsel for the petitioners and learned counsel for the State.



3. Petitioners, in the present case, are questioning the order contained in Memo No. 3216 dated 22.09.2020 and Memo No. 3323 dated 23.09.2020 issued by the Civil Surgeon-cum-Chief Medical Officer, Gaya whereby and whereunder the petitioners were transferred from Primary Health Centre, Tekari, Gaya to different community Health Centres mentioned in the order dated 22.09.2020 in the Naxal affected areas.

4. Learned counsel for the petitioners submits that these petitioners were appointed on compassionate ground. Family members of petitioner no. 2 were killed in the Bara Massacre. Learned counsel submits that during Covid-19 period, by order of the District Magistrate, Gaya, the Civil Surgeon-cum-Chief Medical Officer, Gaya issued transfer orders as contained in Annexure '7' and '8' to the writ application. These transfer orders were not served upon the petitioners but with a malafide intention the Civil Surgeon got an endorsement from the Peon Rameshwar Paswan that the petitioners had refused to receive the transfer orders. In this connection, a letter of Rameshwar Paswan, the Class IV employee posted at Additional Primary Health Centre, Bhor, Tekari has been brought on record as Annexure '12' to the writ application.



5. Learned counsel submits that no communication at all was made to the petitioners. The petitioners were not being paid their salary and in this regard petitioner no. 2 made a representation as contained in Annexure '10' to the writ application whereafter the Incharge Medical Officer, Tekari sent a letter dated 06.01.2021 (Annexure '11') informing that since he had not submitted his joining on the transferred place hence his payment had not been made.

6. Learned counsel submits that the present position is that the petitioner no. 1 has already retired from service whereas petitioner nos. 2 and 3 are working at their respective transferred place since 25.03.2021 and 26.03.2021 respectively. They have however not been paid for the period September 2020 to March 2021.

7. A counter affidavit has been filed on behalf of the respondents. The respondents are justified the transfer on the ground that the petitioners were creating hindrance in smooth working of the Health Centre in the name of union. In this connection, Annexure 'A' to the counter affidavit discloses that the then Incharge Medical Officer, Tekari wrote a letter to the Civil Surgeon, Gaya and the District Magistrate, Gaya wherein he complained against the petitioners.



8. It further appears that on the letter of the Incharge Medical Officer, the District Magistrate, Gaya directed the Civil Surgeon to take appropriate disciplinary action against the petitioner and also to transfer them from the present place. Accordingly, petitioners were transferred. In the counter affidavit, however, there is no averment that the transfer orders were duly served upon the petitioners.

9. In paragraph '14', it is stated that the order has been forwarded to their registered address through registered post but in support of the said statement neither the copy of the letter said to have been sent by registered post nor the proof of dispatch of letter by registered post has been brought on record.

10. Having heard learned counsel for the petitioners and the State, this Court finds that so far as the order of transfers of the petitioners are concerned, since the petitioners have already joined there and they are working for more than two years, this Court need not go into the validity of the transfer orders. One thing which is evident from the records is that *prima-facie* the petitioners are able to make out a case that they were transferred during Covid-19 period and it was on the basis of a complaint made by the Incharge Medical Officer. It is also evident that the transfer orders were issued by the Civil



Surgeon, Gaya but on record there is no proof of service of the same save and except the bald statement of the respondents in the counter affidavit. This being the position, this Court is of the considered opinion that in the unprecedented situation like Covid-19 period, if the transfers were made but in absence of service of the transfer orders the petitioners could not join on the transferred place, they cannot be deprived of their salary for the period September 2020 to March 2021.

11. This Court, therefore, directs the Civil Surgeon-cum- Chief Medical Officer, Gaya (respondent no. 5) to ensure that the salary of the petitioners for the period September 2020 to March 2021 are duly paid within a period of two months from the date of receipt/production of a copy of this order.

12. This Writ Application stands disposed of accordingly.

13. If the petitioners complete their present tenure, the respondents shall consider them for the transfers in routine manner like others.

(Rajeev Ranjan Prasad, J.)

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