

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2408 of 2018

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Ram Pravesh Singh S/o Late Bankey Singh R/o Mohalla - Professor Colony
Dinkar Nagar, P.S. - Sadar, District - Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
4. The Officer-on-Special Duty, Health Department, Bihar, Patna.
5. The Civil Surgeon-cum-Chief Medical Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Advocate
For the Respondent/s : Mr. Rajeshwar Singh -GA10
Mr. Manoj Kumar Yadav, AC to GA10

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 19-09-2023 Heard Mr. Rajeev Kumar Singh, learned Counsel for

the petitioner and Mr. Manoj Kumar Yadav, learned AC to GA-

10.

*2. The present petition has been preferred for
issuance of an appropriate writ(s)/order(s)/direction(s) to the
respondents to quash the Notification No.12 dated 04.01.2018
issued by the Officer-on-Special Duty, Health Department,
Bihar, Patna, whereby and where under after holding
appointment of the petitioner as illegal/forged, on the post of
Non-medical Assistant, District Leprosi Control Unit,
Begusarai, direction has been issued to the Civil Surgeon-cum-*



Chief Medical Officer, Begusarai to institute an F.I.R. against the petitioner.

3. The case of the petitioner as narrated by Mr. Singh is/are that on 01.04.1987, the petitioner was appointed as the Non-Medical Assistant alongwith two others vide memo no. 416 dated 01.04.1987 by the Civil Surgeon-cum-Chief Medical Officer, Begusarai (Annexure-2 to the petition).

4. Two years later, vide memo no. 1851 dated 07.08.1989, the appointment was held illegal and accordingly, was cancelled by the same office. (Annexure-3 to the petition).

5. It is the case of the petitioner that aggrieved, he moved before the Patna High Court in **CWJC No. 6813 of 1990** which came to be allowed on 25.05.1991 and the relevant part of the order is as follows:

“Having worked for 28 months continuously their services would not be suddenly terminated asking them to show cause as to now their appointment were illegal or irregular. We, therefore, quash the order of termination continue in Annexure-7 and direct the authorities concerned to consider the question of illegality or irregularity in their appointment and only after giving



view and opportunity by serving notice and only thereafter so record the reasons as to how their appointment were illegal or irregular.

The aforesaid at step will be taken by the respondents authorities if at all the they consider it legitimate to do so.

This application allowed with one directions indicated above. The petitioners shall be paid their sue salary and they will continue until their service are duly terminated.”

6. It is his submission that subsequently on 06.07.1991 , he was reappointed and later vide memo no. 3339 dated 29.04.1995, the services were regularized by the office of the respondent no. 5.

7. His submission is that however, his journey in and out of office continued and in continuation of that, a show cause was issued to him on 27.11.2002.

8. It is his further submission that subsequently, the Civil Surgeon, Begusarai vide letter no. 941 dated 27.03.2003, upon query, informed the Director-in-Chief, Health Services, Bihar, Patna that there is no ground for holding the appointment of the petitioner amongst other to be an illegal one (Annexure-8 to the petition). Subsequently, vide letter dated 27.06.2003, the



Regional Deputy Director, Health Services, Munger Division, Munger submitted the same view having concurred with the opinion of the Civil Surgeon.

9. Later vide memo no. 289 (4) dated 20.03.2004, the Director-in-Chief issued order to make payment to those employees who are working in the office. His case is that in view of the said letter, he was also paid the salary.

10. With the help of Annexure-12, learned Counsel for the petitioner submits that on 27.03.2010, the Civil Surgeon, Begusarai confirmed amongst other the services of the petitioner.

11. It is his case that in 2014 also, the Assistant Civil Surgeon, Begusarai issued show cause and the same was replied but nothing happened.

12. The next submission put forward by him is that one Arvind Kumar Singh, inimical to him, submitted a petition before the Public Grievance Redressal Officer, Bihar, Patna on 08.02.2017 (Annexure-15) alleging that the petitioner amongst other is illegally working on the post. Accordingly, the wheel again started rolling and this followed the show cause issued by the Civil Surgeon, Begusarai vide memo no. 842 dated 15.04.2017 (Annexure-16 to the petition).



13. It was immediately replied by the petitioner on 20.04.2017 (Annexure-17 to the petition).

14. He was thereafter asked to submit all the documents relating to his appointment by the Director-in-Chief, Health Services, Bihar, Patna vide letter no. 140 dated 31.10.2017 (Annexure-18 to the petition).

15. He diligently replied on 03.11.2017 (Annexure-19 to the petition).

16. It is his submission that later the said Arvind Kumar Singh submitted another application before the Appellate Authority on 05.12.2017. According to him, this led to issuance of letter no. 12 dated 04.01.2018 passed by the Special Work Officer, Health Department, Bihar, Patna by which the Civil Surgeon-cum-Chief Medical Officer was directed to lodge the FIR against this petitioner amongst other as the Director-in-Chief has found the appointment to be illegal/forged (Annexure-1 to the petition).

17. Learned Counsel for the petitioner submits that for three decades, inquiry was/were continuing, show caused asked for, replied, the respondents being satisfied allowed him to continue in service and on the basis of the complaint of one Arvind Kumar Singh before the Public Grievance Redressal



Officer, Bihar, Patna, the order in question has come.

18. He has taken this Court to **The Bihar Right to Public Grievance Redressal Act, 2015** with special reference to Section **2(a)** which relates to definition/complain and read as follows:

2. Definitions.-*In this Act, unless the context otherwise requires,-*

(a) "complaint" means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005(Central Act No. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011;

19. It is his submission that a bare perusal of it would



show that the Officer concerned had no right to act relating to public servant and referred the matter to the Health Department which led to the fresh inquiry/order in question.

20. He has further drawn attention of this Court to an order of the Patna High Court in the case of **Rama Shankar Dubey vs. the Bihar State Housing Board and Ors** reported in **2000 (2) PLJR** with reference to paragraph 6 which read as follows :

6. There is no dispute about the fact that in the instant case, eviction case No. 17 of 1990 was registered under section 59 of the Act against the appellant in the Court of the Subdivisional Officer, Sadar Patna. By his order dated 25.2.1991 the Subdivisional Officer, (Sadar) Patna purported to pass an order under Section 59 of the Act directing the appellant to vacate the flat in question within fifteen days from the date of the order, failing which he was to be evicted from the flat by use of force. The appeal preferred by the appellant being Appeal No.2 of 1992, was dismissed by the appellate authority by the impugned order dated 28.12.1996. It was, therefore,



submitted before us that the order passed by the Sub-Divisional Officer was wholly without jurisdiction, since he was not authorised to perform the functions of the competent authority under Chapter-IX of the act. It was further submitted that this is not a case where there was an error in the exercise of jurisdiction or even a case where there was any dispute as to the jurisdiction of the Subdivisional Officer. This is a clear case of complete lack of jurisdiction so far as Subdivisional Officer, (Sadar) Patna, was concerned. He had ceased to be the competent authority after issuance of notification on 3rd February, 1981 and therefore, he could not either initiate or adjudicate a proceeding under section 59 of the Act after that date. He has done so by usurping jurisdiction which by law was not vested in him. It is well settled that where an order has been passed by an authority which completely lacks jurisdiction, not only the order passed by such authority but also the consequential action taken pursuant thereto, must be quashed.

21. He as such submits that in that backdrop, the



direction to lodge FIR holding his appointment to be illegal/forged has to go.

22. The State has filed counter affidavit and according to learned A.C. to GA-10, the same has been filed on behalf of the respondent no. 3. However, upon perusal of the counter affidavit, neither the respondent number has been incorporated nor the paragraph number 19 which requires the officer to fill the paras relating to knowledge and/or the statement that is/are based on records have been filed. It is rather blank.

23. Considering the kind of counter affidavit that has been filed, this Court has two options-either to reject it and direct filing of fresh counter affidavit or to impose a cost.

24. As the counter affidavit is of 2018, it would be futile asking for filing another reply. Alternatively, a token cost of Rs. 500 is imposed on the office of G.A. 10 to be paid to the Patna High Court Legal Services Committee within two weeks and receipt to be filed in the office failing which the file be placed under the heading 'To Be Mentioned'.

25. Learned AC to GA10 makes preliminary objection that the entire submission of the petitioner is based on the fact that his case has been considered in the light of the complaint made by Arvind Kumar Singh. However, from the respondent



column, the name of Arvind Kumar Singh is missing inasmuch as he has not been made party respondent.

26. The next submission of the learned State Counsel is that upon perusal of the prayer portion, it would show that it has merely asked for quashing of the notification no. 12 dated 04.01.2018 (Annexure-1 to the petition) and it is not the case of the petitioner that the direction issued by the Public Grievance Redressal Officer be also quashed and in absence of that he cannot agitate the matter that the entire case is based on the Public Grievance Redressal Officer.

27. The points raised by the learned AC to GA-10 is/are valid. Neither the concerned person, Arvind Kumar Singh has been made party respondent nor such prayer for the quashing of the direction of Public Grievance Redressal Officer has been made. Thus, the prayer/submission of the petitioner on this count stands rejected.

28. In that background, this Court has to evaluate the facts of the case.

29. The counter-affidavit of the respondent no. 3 (as informed by learned AC to GA-10) shows that the concerned respondent made a preliminary inquiry and the same has been incorporated as Annexure-A to the counter affidavit in which it



has been held that the two fold observation of the Patna High Court in CWJC No. 6813 of 1990 was not complied in toto inasmuch as though the petitioner was allowed to continue in service, no further comprehensive inquiry was held.

30. Further, upon being satisfied with the facts of the case, it was held vide report dated 13.11.2017 that prima-facie, the appointment seems to be illegal.

31. Accordingly, not only the direction was given for lodging of the FIR (Annexure-1 to the petition), simultaneously vide memo no. 11 dated 04.01.2018 (Annexure-C to the counter affidavit) further direction was given to hold departmental proceeding against him amongst other.

32. At this stage, learned Counsel for the petitioner submits that though the order for initiating departmental proceeding was made, in view of the fact that the birth year of the petitioner is 1961 and as such he would have retired in 2021, the latest development of the case is not known to him.

33. Upon query, learned State Counsel is also not in position to inform the Court about the present status of the case.

34. In that view of the matter, instead of keeping the writ petition pending, it would be appropriate that the same is disposed of with following observation:



(i) considering the fact that in the inquiry, the Inquiry Officer came to a prima-facie opinion that the appointment of the petitioner was found to be illegal, unless the same culminates into the final order pursuant to the holding of the departmental proceeding, in accordance with law, the petitioner is entitled to the salary;

(ii) if pursuant to the said decision to hold departmental proceeding; the petitioner was put under suspension, he is/was entitled to the subsistence allowances.

35. So far as the lodging of the FIR is concerned, the petitioner is well advised to take recourse to the remedy available under the Code of Criminal Procedure.

36. The petitioner to represent before the concerned respondent no. 3 for payment of his salary/subsistence allowance within eight weeks from today.

37. If such representation is preferred, the same has to be decided in accordance with law by the respondent no. 3, the Director-in-Chief, Health Services, Bihar, Patna at an earliest.

38. The writ petition stands disposed of.

(Rajiv Roy, J)

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