

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1719 of 2018

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Milan Prasad Thakur S/o Late Satyanarain Thakur, resident of Village-
Hasanpur, P.S.- Teghra, District- Begusarai, at present working as Office
Assistant, Grade- II, I.G.I.M.S., Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Indira Gandhi Institute of Medical Science I.G.I.M.S., Sheikhpura,
Patna, through its Director
4. The Deputy Director, I.G.I.M.S., Sheikhpura, Patna.
5. The Chief Administrative Officer, I.G.I.M.S., Sheikhpura, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Tiwary
For the Respondent/s	:	Mr. S.D. Yadav, AAG 9
		Mr. Braj Bhushan Mishra AC to AAG-9
For the IGIMS	:	Mr. Sunil Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

6 31-10-2023 Heard learned counsel for the petitioner, learned
counsel for the I.G.I.M.S and learned counsel for the State.

2. This writ petitioner has been filed for directing the
respondent I.G.I.M.S to regularize the services of the petitioners
from the date of his initial appointment i.e. 14.04.1986 and to
give him all his consequential benefits in the light of the
direction given by this Hon'ble Court in Annexure-2 and further
to direct the respondent to pay salary and other allowances for



the period with effect from April, 2009 to March, 2013 to the petitioner which has been given to other similarly situated person who were continued in the service in the light of direction given by this Court.

3. Counsel for the petitioner submits that petitioner was appointed on temporary post as the Godown Guard with effect from 14.04.1986 and since then he is regularly working in the Office of Respondent I.G.I.M.S. Counsel further submits that the petitioner has served here for about two decades. There was also 17 other similarly situated persons who were working in the I.G.I.M.S. They jointly filed C.W.J.C. No. 5913 of 2003 for regularization of their services.

4. The said writ petition was finally disposed of vide order dated 29.09.2005 in which respondents were directed to constitute a committee to consider the case of the petitioner and others for regularization of the services.

5. Counsel further submits that even after recommendation of the committee for the regularization, the services of the petitioner was not regularized by the then Director. Thereafter, seven persons out of 17 earlier writ petitioners have moved another writ bearing C.W.J.C. No. 5537/2009 in which the present petitioner was Petitioner No. 2



and the said writ petition C.W.J.C. 5537 of 2009 in which the petitioner and others have challenged their termination order dated 22.04.2009. The petitioners second writ petition C.W.J.C. No. 5537 of 2009 was disposed of vide order dated 03.02.2010 in which specific direction was made to the petitioner is as follows:

“The respondent Nos. 2 and 3. are directed to take necessary steps for sanctioning of these posts, and regularization of the petitioner no. 2, 3, 4, 5 and 6. Till date posts are sanctioned, petitioner no. 2, 3, 4, 5 and 6 will continue to discharge their duties.

The recommendation of the Standing Selection Committee dated 02.01.2009 (Annexure-9) and 17.01.2009 (Annexure-10) are quashed. The Director of the IGIMS is directed to regularize petitioner nos. 1 and 7 on the posts for which they are found eligible as per the report submitted by the Five Men Committee. The order of termination as contained in Annexure-12 dated 22.04.2009 is quashed. The Respondents are directed to reinstate the petitioners and allow them to continue on the post till the appropriate order for regularization is passed. The regularization order in case of petitioner no. 1 and 7 be passed within four weeks and in case of other petitioner's within three months.”

6. Counsel further submits that being aggrieved and dissatisfied with the said order passed by the Hon'ble Single Judge, the I.G.I.M.S. preferred L.P.A. No. 503 of 2010. The said L.P.A. was disposed of with the following observation:

“In view of the above statement made in the supplementary counter affidavit we are not in agreement with the contentions raised by Mr. Lalit Kishore, learned Senior Counsel that the posts are unsanctioned as a clear statement has been made



in the supplementary counter affidavit that 138 posts are sanctioned out of which 89 employees are working. The remaining posts have been advertised and applications have already been scrutinized but further procedure have not been adopted due to non availability of funds

In view of the aforesaid statement made in the supplementary counter affidavit filed in C.W.J.C. No. 5913 of 2003 we are of the opinion that the order of the learned Single Judge can be modified to the extent that the cases of the writ petitioners respondents herein must be considered against the said sanctioned posts as per their eligibility within a period of four months from the date of receipt/production of a copy of this order.

With the aforesaid observation these appeals are disposed of.”

7. Learned counsel for the petitioner further submits that being aggrieved and dissatisfied with the order passed by the L.P.A. Bench, the IGIMS has preferred S.L.P. before Hon'ble Supreme Court of India being S.L.P. (Civil)...../2011, CC 21929/2011 and SLP(C)..../2011 CC No. 21702/2011 in which Hon'ble Supreme Court has pleased to observe that :

“Delay condoned.

Having heard the learned counsel for the petitioner and after perusal of the record we are not inclined to interfere with the impugned judgment.

The Special Leave Petitions are, accordingly, dismissed”

8. Counsel for petitioner submits that after finality of dispute of the petitioner by Hon'ble Supreme Court, the Director I.G.I.M.S. has issued letter no. 202 dated 18.01.2013 in which decision was taken by the institution to consider the case of



seven persons including the present petitioner who was at Sr. No. 7. Counsel further submits that in furtherance of the said letter another office order has been issued in which the petitioner was appointed with effect from 16.02.2013 (Annexure-7).

9. Counsel for petitioner submits that the said annexure 7, office order vide memo no. 433 dated 16.02.2013 has not been issued in the light of the order passed by the Hon'ble Patna High Court in C.W.J.C. No. 5537 of 2009 and further in L.P.A. No. 503 of 2010.

10. Counsel further submits that the observation made by this Hon'ble Court by Hon'ble Singe Judge and Hon'ble Division Bench has completely been ignored and therefore, he submits that the said appointment letter be made effective from the date of his initial appointment. He also submits that since there is a clear cut direction in the writ petition to the respondent to reinstate the petitioner and allow them to continue on the post till the appropriate order from employment is passed as well as termination order dated 22.04.2009 has been quashed. Therefore, the arrear of his entire salary calculating from 22.04.2009 may also be directed to be paid.

11. Counsel for I.G.I.M.S. has filed counter affidavit



and submits that the order passed by Hon'ble Single Bench, Hon'ble Division Bench and the Hon'ble Supreme Court have duly been complied. He submits that the order passed in C.W.J.C. may be final for the petitioner but, it has not acquired finality and it has been challenged before the L.P.A. Bench and subsequently challenged before Hon'ble Supreme Court. The said order passed by the Hon'ble Single Bench of this Court has acquired finality only on 16.07.2012 i.e. on the date of final disposal of S.L.P. before the Hon'ble Supreme Court. Counsel further submits that in compliance of the decision passed by this Court after acquiring finality in the year 2012 particularly of 16.07.2012. The case of the petitioners have been taken into consideration and vide Memo No. 463 dated 16.02.2013, the petitioners were appointed a fresh as per their eligibility and experience.

12. In this light of the submission made by the parties, this Court is of the view that the order passed by the Single Judge in favour of the present petitioner was of 03.02.2010 by which his termination order dated 22.04.2009 was quashed and specific direction was given to I.G.I.M.S. to reinstate the petitioner and allow them to continue till the appropriate order for regularization is passed.



13. From the record, it transpires this Court that order of afresh appointment has been passed vide Annexure 5 with effect from Memo No. 463 dated 16.02.2013. The said office order is completely silent about treating the petitioner continuity with effect from 22.04.2009 to 16.02.2013. Court has also found that the said letter dated 16.02.2013 is not the letter of reinstatement rather, it is a letter of fresh appointment. In this view of the matter this Court is fully dissatisfied by the decision taken by the I.G.I.M.S. and held that order passed by Hon'ble Single Bench which acquires finality in S.L.P. has not been complied with true spirit. The said order is basically two fold. The first is reinstating the petitioner with effect from 02.04.2009 and allowing them to continue on the said post meaning thereby petitioner is entitled for getting the salary for the said post and further the order of regularization should be made.

14. In this background, this Court directs the Respondent I.G.I.M.S. to assure payment of the petitioner as well as provide appropriate order of regularization. In this light of the observations made by the Hon'ble Single Judge subsequently affirm in L.P.A. and S.L.P. within three months from the date of filing of the fresh representation by the petitioner.



15. With the aforesaid direction, this writ petitioner is disposed of.

(Dr. Anshuman, J)

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