

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9145 of 2022

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Sumit Bharti, Wife of Tejendra Kumar, R/o Mohalla - Lohia Nagar Ward No. 19, P.O. - Madhepura, P.S. - Madhepura, District- Madhepura (Bihar) at present posted as District Account Manager, District Health Society Madhepura. Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
3. The State Health Society, Bihar through its Executive Director, Sheikhpura, Patna.
4. The Executive Director, State Health Society, Sheikhpura, Patna.
5. The Incharge (H.R) State Health Society, Sheikhpura, Patna.
6. The Development Commissioner-cum-Chairman, State Health Society, Bihar, Patna.
7. Raj Kishore Son of not known to the petitioner, District Account Manager Kishanganj, District Health Society Kishanganj, District- Kishanganj.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 14549 of 2022

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Sumit Bharti Wife of Tejendra Kumar R/o Mohalla- Lohia Nagar Ward No.- 19, P.O.- Madhepura, District- Madhepura (Bihar) at present posted as District Account Manager, District Health Society Madhepura. Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
3. The State Health Society, Bihar Through its Executive Director, Sheikhpura, Patna.
4. The Executive Director State Health Society, Sheikhpura, Patna.
5. The Incharge (H.R.) State Health Society Sheikhpura, Patna.
6. The Chairman of the Governing body District Health Society, Madhepura, District- Madhepura.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 9145 of 2022)

For the Petitioner : Mr. Dinu Kumar, Advocate

For the State : Ms. Vijaya Laxmi Srivastava, AC to SC-23

for the State Health Society : Mr. K.K. Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 14549 of 2022)

For the Petitioner : Mr. Dinu Kumar, Advocate



For the State : Mr. Chandra Shekhar Singh, AC to GA-10
for the State Health Society : Mr. K.K. Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 21-04-2023 Heard learned counsel for the petitioner, learned
counsel for the State Health Society, Bihar and learned counsel
for the State in both the writ applications.

2. These two writ applications have been taken up
together for consideration on the request of learned counsel for
the parties.

CWJC No. 9145 of 2022

3. This writ application has been filed seeking the
following reliefs:-

“(A) For quashing of the office order vide Memo No. 1316 Patna dated 09.06.2022 issued under the signature of Executive Director, State Health Society Bihar as contained in Annexure-4 by which the petitioner has been transferred as District Account Officer, Madhepura to District Account Officer Araria and Raj Kishore District Account Officer, Kishanganj respondent no. 7 has been posted in place of the petitioner on ground public interest and administrative region as per clause 17 (a) of chapter II of HR policy of Bihar State Health Society and decision of the governing body taken in proceeding no. 28/12.

(B) Also commanding the respondent to not take any coercive step against the petitioner for not joining a transferred place at Araria as per the direction contained in letter dated 09.06.2022 as contained in Annexure’4.

(C) Also for quashing the decision if any taken against the petitioner by the respondent for not joining the transferred place at Araria during the pendency of this writ application.



(D) Commanding the respondents to allow the petitioner to continue as District Account Manager, Madhepura as usual.”

Brief Facts of the case

4. The petitioner was appointed as District Account Manager, Bihar Health Society, Madhepura in the year 2009. She continued as Account Manager in the District Health Society, Madhepura until she was transferred in administrative exigencies to District Health Society, Araria vide order contained in Memo No. 1316 dated 09.06.2022 issued under signature of the Executive Director, State Health Society, Bihar. This order of transfer (Annexure ‘4’ to the writ application) is impugned in this writ application.

Submissions on behalf of the Petitioner

5. Learned counsel for the petitioner submits that the post of District Account Manager is a district cadre post and as per service regulation of the State Health Society, copy of which has been placed on the record, its transfer policy says that the transfer of employees in respect of five District Programme Management Unit (in short ‘DPMU’) positions may be considered from one district to another on consent/administrative ground. It is his submission that no administrative ground has been indicated in the impugned order and at the same time, it is not a consent transfer.



6. Learned counsel has relied on paragraph '8.7' of the guidelines issued by the National Health Mission (NHM) in the year 2022. It is submitted that as regards posting and transfer, the guidelines says that NHM employees should not be subjected to any routine transfers. Learned counsel submits that similar view should be taken by the State Health Society.

7. Learned counsel further submits that at one stage, the State Health Society called for an opinion from the learned Advocate General and that opinion has been taken note of in the Resolution of the 28th Meeting of the State Health Society held on 24.01.2019. Learned counsel submits that despite there being an opinion that it is a district cadre post and transfer may be affected on the basis of consent only, the State Health Society in its meeting authorised the Executive Director, State Health Society, Bihar to take a decision regarding transfer of its employees either on consent basis or in case of administrative exigencies.

8. Learned counsel submits that since the petitioner had moved this Court challenging the order of transfer on or about 29th June 2022, she had not joined at the transferred place.

9. It is submitted that in the meantime during pendency of this writ application, the Executive Director served



Letter No. 2580 dated 21.07.2022 directing the petitioner to either join at the transferred place or it will be taken as her unauthorised absence.

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Brief Facts of the Case

10. Learned counsel for the petitioner submits that this writ application has been filed challenging the order as contained in Memo No. 3216 dated 27.08.2022 issued by the Executive Director, State Health Society, Bihar whereby and whereunder the petitioner has been placed under suspension with a direction that during the suspension period, her Headquarter will be at Headquarter Bihar Health Society, Bihar, Patna and she will be paid the subsistence allowance for the period under suspension as payable under clause (14) under Chapter VIII of the HR Policy of the Society. In this writ application, prayer has been made to direct the respondents not to give effect to the order placing the petitioner under suspension.

11. Learned counsel for the petitioner submits that on perusal of Rule 13 of the Service Rules of the Society, it would appear that appointing authority or any other authority superior thereto may place an employee under suspension where a



disciplinary proceeding against him is contemplated or is pending but such order of suspension shall remain enforced for a maximum period of three months. During this period, a chargesheet must be framed and served upon the employee failing which on expiry of three months, the suspension order shall be deemed to have been revoked.

12. Learned counsel submits that even as the petitioner was placed under suspension as back as on 27.08.2022, till date no chargesheet has been served upon her, therefore, by virtue of clause (d) Rule 13 of the Service Rules of the State Health Society, Bihar, the suspension order shall be deemed to have been revoked.

Submissions on behalf of the State Health Society.

13. Learned counsel for the State Health Society has opposed both the writ applications. Learned counsel has drawn the attention of this Court towards the transfer policy of the society as contained in Service Rules. According to him, Rule 17 categorically states that the services of employees of the State Health Society, Bihar are transferable to any place within Bihar.

14. Learned counsel submits that the petitioner was working as District Account Manager and in her case, her



transfer may be affected either with consent or on administrative ground. It is his submission that by virtue of her transfer, the petitioner has neither lost her seniority or in any form her status and pay and allowances. It is pointed out with reference to the resolution of the Society that the Society has received the opinion of the learned Advocate General wherein it was opined that even though the post are district cadre post within the General Control and Supervision of the District Health Society, still any incumbent working on such post can be transferred from one district to another district on the basis of the consent of the concerned employees.

15. Learned counsel submits that even though the recruitments are made by the District Health Society independently and the petitioner belongs to a district cadre but in case of administrative exigencies, she should be transferred to any other district by the State Health Society as per the Service Rules. It is not disputed that the terms and conditions of service of the petitioner would be covered under the Service Rules framed by the State Health Society.

16. So far as the order of suspension of the petitioner is concerned, learned counsel submits that the petitioner was called upon to join at the transferred place and the letter



contained in Memo No. 2580 dated 21.07.2022 clearly states that after joining at the new place, she may make an application in accordance with law for getting leave. It is submitted that instead of joining at the transferred place, she chose to await the decision of this Court.

17. Learned counsel for the State in both the applications are present, however, the contest is between the petitioner and the State Health Society.

Consideration

18. Having heard learned counsel for the petitioner, State Health Society and the State as also on perusal of the records, this Court finds that admittedly, the petitioner is an employee of the State Health Society, Bihar, though her appointment has been done at the district level by the District Health Society. The transfer policy as contained in the Service Rules clearly provides that normal tenure of posting of an employee working in the office of SHSB/DHS or any of its unit shall be minimum three years. Rules 17(a) and 17(c) further make it clear that transfer of an employee shall be considered under any of these conditions and one of them is the administrative ground. This Rule makes it crystal clear that the services of the employees of the Society are transferable to any



place within Bihar. It further provides that the transfer for posting at the same or nearest station/place where spouse is posted is a consideration subject to the condition that the spouse is employed in State undertaking or State Government of Bihar.

19. This Court finds that in this case, the petitioner has stayed with her husband at one place since the year 2009. Her husband is also employed as District Planning Coordinator in the District Health Society, Madhepura. For the first time, the petitioner has been transferred to Araria. In terms of the transfer policy, it is neither a case of violation of any provision of the policy nor any malafide may be found in the transfer of the petitioner. This Court is, therefore, of the considered opinion that the impugned order of transfer needs no interference.

20. As regards suspension of the petitioner, this Court is of the opinion that since the petitioner had filed the writ application and the same was pending consideration before this Court and the consideration was delayed for no fault on her part, her immediate suspension within two months of the filing of the writ application was not warranted. In any case, since she has remained under suspension from 27.08.2022 but has not been served with any chargesheet, as per the Service Rules of the State Health Society, the suspension will be deemed to have



been revoked.

21. The Executive Director, State Health Society shall take into consideration these aspects of the matter and pass an appropriate order with a reasonable period revoking the suspension of the petitioner giving her some time to join at Araria.

22. CWJC No. 14549 of 2022 is disposed of with the aforesaid observations and directions.

23. CWJC No. 9145 of 2022 is dismissed.

(Rajeev Ranjan Prasad, J)

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