

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.472 of 2020

Umesh Ram Son of Ram Swarup Ram resident of Narayanpur, P.O.- Sakri,
P.S.- Manigachhi, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in- Chief (Disease Control) Health Services, Health Department, Government of Bihar, Patna.
4. The Civil Surgeon-cum- Chief Medical Officer, Madhubani.
5. The Incharge Medical Officer, Primary Health Centre, Pandaul, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Adv.

For the Respondent/s : Mr. Rajeshwar Singh, GA-10

Mr. Jitendra Kumar, (AC to GA-10)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 12-10-2023

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The present writ application has been filed for quashing the order dated 23.06.2019 as contained in Memo No. 868(4) dated 25.06.2019 annexed as Annexure- 9 issued by respondent no. 3 (The Director-in-Chief {Disease Control} Health Services, Bihar, Patna) and communicated to the petitioner vide Memo No. 300/ Pandaul dated 16.07.2019.

3. Learned counsel for the petitioner submits that the petitioner was initially engaged by the Civil Surgeon-cum- Chief Medical Officer, Madhubani on the post of Sweeper as daily wager vide Memo No. 2293 dated 30.12.1988. Thereafter, his service was regularized vide letter no. 1028 dated

19.05.1992 by the then Civil Surgeon-cum-Chief Medical Officer Madhubani on the recommendation of the Directorate Health Services, who found the service of the petitioner satisfactory.

4. Learned counsel for the petitioner further submits that the petitioner has been discharging his duty on the satisfaction of the authorities concerned and there was nothing against him. Service book was also opened and he was granted all the service benefits. Counsel further submits that in the district of Madhubani in the Health Department, an inquiry was set up with respect to appointment of 61 employees including 6 Class-IV employees but vide letter no. 1667(4) dated 12.09.2011, the service of the petitioner was found legal/valid and name of the petitioner in the said list was found at serial no. 4.

5. Learned counsel for the petitioner further submits that in the year 2019 vide Memo No. 739(4) dated 28.05.2019, the Director-in-Chief (Deceased Control) Health Service, Bihar, Patna has issued a show cause notice to the petitioner directing him to file his reply within five days. The petitioner has filed his reply about his selection and regularization but *Prapatra- K* has been issued to the petitioner vide Memo No. 2415 dated 22.09.2018 by the Civil Surgeon, Madhubani. The petitioner has filed his reply on 09.01.2018

requesting him to exonerate him from the charges framed vide Memo No. 2415 dated 22.09.2018, but the Director-in-Chief (Deceased Control) Health Services vide his order dated 23.06.2019 as contained in Memo No. 868(4) dated 25.06.2019, communicated to the petitioner that his service be declared as illegal and *void ab initio*, therefore, the petitioner was terminated without considering his reply and the documents submitted without a full fledged departmental inquiry on the dictates of the Hon'ble *Lok Ayukt*, Bihar, Patna.

6. Learned counsel for the petitioner further submits that in the writ petition, the petitioner primarily challenges that his appointment was made by the competent authority. In the inquiry, his appointment was found valid and thirdly on the ground that when *Prapatra- K* has been issued, in which departmental proceeding has been initiated, then instead of passing any order followed by departmental proceeding, a letter has been issued in which his service has been terminated which is bad in law and, therefore, he submits that interference is required in this matter.

7. Learned counsel for the State on the other hand filed reply and submits that the initial appointment of the petitioner of the year 1980 is itself illegal as the said appointment has been made in gross violation of the then circular. According to him, the said circular is Annexure- (C) of

the counter-affidavit filed by respondent no. 3, who submits that according to the said circular that the methodology of appointment has been mentioned in paragraph 6, 7 and 10 of the said circular which has completely been ignored.

8. Learned counsel for the State further submits that there were series of persons who were appointed on Class-IV post ignoring the said circular and the subsequent guidelines issued by the Chief Secretary, Government of Bihar, in letter no. 16441 dated 03.12.1980. Counsel further submits that the said circular was tested up to the Hon'ble Supreme Court in Civil Appeal No. 8649 of 2018 arising out of SLP (C) No. 24742 of 2012 (*The State of Bihar & Ors. Vs. Kirti Narayan Prasad*).

9. The stand of the State is that since the appointment of the petitioner is *void ab initio*, therefore, the petitioner cannot be said to be the civil servant and hence, protection under Article 311 of the Constitution to conduct the disciplinary proceeding under the disciplinary rules shall not arise.

10. Learned counsel for the State further submits that in the order impugned *i.e.* issued vide Memo No. 1841 dated 03.07.2019, this aspect has categorically discussed and there is no question of any interference in the same.

11. Upon going through the pleadings of the parties and the documents mentioned in the writ petition, it transpires to

this Court that the initial entry of the petitioner has been made in gross violation of the letter annexed in Annexure- 3 *i.e.* letter no. 16441 dated 03.12.1980 and in the said judgment, particularly, 17(i) indicates that Hon’ble Apex Court at the time of deciding has categorized four situations. One of the situations is appointment made on the basis of forged appointment letter.

12. In view of this Court, any appointment made ignoring the law of the land and issuance of appointment letter on the basis of ignoring such law shall be treated to be the appointments made on the basis of the forged appointment letter about which the finding is already there in the Hon’ble Apex Court that such appointments, where back-door entries on the act of nepotism and favouritism and thus from any judicial standard cannot be said to be a regular appointment but are illegal appointments in wholly arbitrary process and in this background, this Court found no merit in this writ petition.

13. With this direction, the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.10.2023
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