

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5728 of 2021

Md. Zahid Iqbal S/o Md. Shababuddin Resident of Mohalla- Haroon Nagar,
Sector- 2, P.S.- Phulwarisharif, District- Patna, the then working as
Parwachak (Reader cum-Associate Professor), Govt. Tibbi College and
Hospital, Kadamkuan, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Patna.
2. The Special Secretary, Health Department, Patna.
3. The Principal, Govt. Tibbi Collega and Hospital, Kadamkuan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Sumit Kumar Jha, Adv. Ms. Riya Giri, Adv. Mr. Ravi Bhusan Bharat, Adv.
For the State	:	Mr. Aditya Nath Jha, A.C. to S.C.-18

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-07-2024

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

2. By filing the present writ application, the petitioner has
prayed for the following reliefs:

- I) For issuance of a writ/order/
direction in the nature of certiorari for
quashing the letter bearing memo no.
GTC/UI-07/2019-933 dated
29.12.2020 passed by the Principal,
Government Tibbi College and
Hospital, Kadamkuan, Patna.*
- II) For issuance of a writ/order/
direction in the nature of certiorari for
quashing the letter bearing the order
Memo No. 975 dated 29.10.2020*



passed by the Deputy Secretary, Health Department Patna.

III) For issuance of a writ/order/direction in the nature of mandamus directing and commanding the respondent nos.1 to 3 to reinstate the petitioner in service with retrospective effect with all admissible allowances.

IV) For any other relief/reliefs for which the petitioner is found entitled in the facts and circumstances of the present case.

3. The facts of the case, in brief, are that the petitioner was appointed on the post of Reader-cum-Associate Professor in the Government Tibbi College and Hospital, Patna on contractual basis on 21.04.2014 after holding a walk-in interview. He worked as *Pravachak* for six years in the said establishment and no drawbacks was found during the period of his service.

4. Later on, an order was issued by the Health Department, Government of Bihar, dated 10.04.2019 to the effect that the Doctors, appointed on contractual basis, shall continue to work as such, till they attain the age of superannuation or their regular appointment, whichever is earlier. It was specifically mentioned in the said order dated 10.04.2019 that there would not be any requirement of formal extension of their contractual engagement. (Annexure-2 of the



writ application).

5. The problem arose when a letter no. 1481 AYUSH dated 05.11.2019 was issued by the Department stating therein that the appointment of the petitioner was made without obtaining roster clearance (Annexure-3 of the writ application). The petitioner replied on 14.11.2019 to the respondent nos. 2 & 3, but the reply to the show cause notice dated 14.11.2019 was not considered by the Health Department and by the Principal, Government Tibbi College Patna and finally, he was removed from the service by letter no. 1618 AYUSH dated 03.12.2019 and subsequent letter no. 860 dated 04.12.2019 on the ground that roster clearance is not granted as his appointment on contractual basis made in the year 2014 was in breach of roster point fixed by the State Government. (Annexures- 4 & 5 of the writ application).

6. Being aggrieved, the said notice dated 05.11.2019 was challenged by the petitioner before this Court by filing C.W.J.C. No. 25452 of 2019, which was allowed setting aside the letter dated 03.12.2019 and consequential order dated 04.12.2019.

7. The petitioner was reinstated in service w.e.f 04.12.2019 with retrospective effect with all admissible allowances, but again for the same cause of action i.e. roster



point clearance, the instant notice memo no. 820 dated 09.11.2020 in pursuance of the Department letter no. 935 (AYUSH) dated 29.10.2020 was issued. (Annexures- 8 & 9 of the writ application). The petitioner has filed replied on 18.11.2020 to the respondent nos. 2 & 3, but ignoring the reply, a final decision was taken with issuance of letter dated 29.12.2020 by the Health Department Patna, Government of Bihar, holding that his appointment on contractual basis, made in the year 2014, was in breach of the roster points fixed by the State Government and the petitioner has been terminated from the service. (Annexures- 10 & 11 of the writ application)

8. Learned senior counsel for the petitioner submits that the petitioner was appointed as *Pravachak* in Ilmul Advia Department and ideal roster point was considered and obeyed during his appointment. It is made clear that the Lecturer is appointed following the ideal roster point and *Pravachak* was appointed following the ideal promotional roster point no. 5 which is unreserved and general category. Therefore, the appointment of the petitioner is in accordance with law following the ideal promotional roster point. So far direct recruitment is concerned, his name also falls at ideal roster point no. 5, which is unreserved and general category.



9. Learned senior counsel further submits that as per advertisement no. 1/20 dated 17.03.2020 issued by the Department in which two post of Ilmul Advia is shown unreserved and general category, but without adjusting the petitioner on the said post, others were appointed, which shows the arbitrariness conducted on behalf of the respondent Authority.

10. Learned senior counsel further submits that the Principal, Government Tibbi College and Hospital, Kadamkuan, Patna has given incorrect statement in impugned order vide its letter no. 933 dated 29.12.2020 that the petitioner was paid his salary since 04.12.2019 to 24.03.2020, but the salary about 4 months is not paid till date. The petitioner has also submitted a representation on 04.03.2021 before the Principal Secretary, Health Department, Patna for payment of his salary since 04.12.2019 to 24.03.2020, but no heed was paid towards the grievance of the petitioner.

11. A counter affidavit has been filed on behalf of the respondent State stating therein that on the basis of legal opinion obtained from the competent authorities and sanction from General Administrative Department, Government of Bihar, a decision to dispense with the engagement of the petitioner has



been taken. It is also stated that the action of removal of the petitioner has been taken in accordance with initial engagement letter dated 21.04.2014 as issued to the petitioner and also as per direction of the Court as passed in CWJC No. 25452 of 2019, dated 18.02.2020 in which it was directed to the State respondent to proceed strictly in accordance with terms of initial engagement of the petitioner dated 21.04.2014 if his service on contractual basis is intended to be dispensed with.

12. Learned counsel appearing on behalf of the State has defended the impugned action of the State Respondents and submitted that the petitioner does not have any right to hold the post, he being contractual appointee. He further submits that the engagement is to be governed by the terms of the order dated 21.04.2014, which stipulated, *inter alia*, that the services of the petitioner would be terminated on giving one month's notice as mentioned in Clause-4 of the same and the petitioner has also been served one month's notice.

13. Per contra, learned senior counsel for the petitioner has referred to the impugned letter and submitted that it does not disclose as to how the petitioner did not fit in the roster points prepared by the concerned department of the State Government. He contends that there is vague mention of violation of roster



points at the time of his initial appointment.

14. The second supplementary affidavit has been filed on behalf of the petitioner stating therein that vide letter as contained in Memo No. 107 dated 15.02.2019 issued by the Principal, Government Tibbi College and Hospital, Kadamkuan, Patna to the Deputy Secretary, Health Department, Government of Bihar, Patna, itself the said Principal (Respondent no.3) categorically stated that the initial appointment of the petitioner was in accordance with roster point. However, the respondent no.3 while passing the impugned order dated 29.12.2020 arbitrarily hold that the initial appointment of the petitioner is against the roster point. The aforesaid fact relating to the initial appointment of the petitioner on the post of Reader was in accordance with roster point, which is also evident from the letter contained in Memo No. 107 dated 15.02.2019.

15. Learned senior counsel for the petitioner further submits that the petitioner has not been served with a copy of ideal roster letter, which is essential for evidence.

16. On asking regarding the copy of ideal roster letter, learned counsel for the State shows his inability to produce the same before the Court.

17. Considering the submissions advanced on behalf of



the parties and the material available on record, it appears that that the initial appointment of the petitioner was in accordance with roster points.

18. In such view of the matter, the impugned letter dated 29.12.2020 (Annexure-11 of the writ application) is set aside and the respondent Authority is directed to reinstate the petitioner in service with retrospective effect with all admissible allowances and grant other consequential benefits to him as well.

19. With the aforesaid direction, the instant application is hereby allowed.

(Anjani Kumar Sharan, J)

divyanshi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2024
Transmission Date	NA

