

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5940 of 2014

Vijay Kumar Mishra Son Of Late Raj Narayan Mishra Resident Of Village
Dhanav, Police Station Baniyapur, District Saran

... .. Petitioner/s

Versus

1. The State Of Bihar through the Commissioner-cum-Secretary, Department of Health, Government of Bihar, Patna.
2. The Director-In-Chief, Health Services, Government Of Bihar, Patna
3. The Civil Surgeon-Cum-Chief Medical Officer, Patna
4. The District Leprosy Eradication Officer, Patna
5. The District Malaria Officer, Patna
6. The Incharge Medical Officer, Primary Health Centre, Fatuha
7. The Circle Officer, Baniyapur, Saran Chapra

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwari, Advocate
For the State : Mr. Rajeshwar Singh, GA-10
Mr. Niraj Kumar, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 24-09-2024 Heard Mr. Sanjay Kumar Tiwari, learned counsel

appearing on behalf of the petitioner and Mr. Rajeshwar Singh,

learned GA-10 along with Mr. Niraj Kumar, learned AC to GA-

10 for the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought *inter alia* following relief(s), which is
reproduced hereinafter:

*"(i) To quash the order contained in memo no.
682 dated 16.01.2010 issued by the Civil Surgeon-cum-
Chief Medical Officer, Patna, by which the petitioner has*



been dismissed from the service with immediate effect without any departmental enquiry.

(ii) To grant any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was dismissed from service on 16.01.2010, however, the petitioner could not bring the said order before the Court, while this Court had passed the order dated 15.11.2010 in CWJC No. 11547 of 2009 directing the respondents to declare the petitioner to produce judgment/decreed of a competent Civil Court in respect of their allegation that the petitioner had impersonated as the son of the deceased employee, namely, Late Raj Narayan Mishra, who had died in harness on 26.09.1991, while he was posted as Dresser at Patna City hospital, Patna and, as such, the impugned order has now become inoperative in view of the order dated 15.11.2010 passed in CWJC No. 11547 of 2009.

4. *Per contra*, Learned counsel appearing on behalf of the respondent submitted that petitioner had filed CWJC No. 11547 of 2009 for quashing of notice dated 19.06.2009 and the order dated 15.11.2010 was passed granting relief to the petitioner, however, the petitioner had not brought on record the dismissal order, which was already passed on 16.01.2010, and is



the subject matter of the present writ petition is himself responsible for suppressing the vital information from the Court.

5. Heard the parties.

6. The order contained in Memo No. 682 dated 16.01.2010 has become inoperative in view of the order dated 15.11.2010 passed in CWJC No. 11547 of 2009, which *inter alia* reproduced hereinafter:

"This is a glaring example how insensitive and inhuman the authorities of the State can be. Petitioner was appointed on compassionate ground in 1994. He continued as such. His appointment was made on an affidavit of the wife of the deceased employee and on a genealogical certificate of the then Circle Officer, Baniyapur, Saran (Chapra). In 2007, respondents received a complaint from some villager that the deceased employee had no son and petitioner was fraudulently appointed showing as son of the deceased. Some enquiries were made on the same and the present Circle Officer issued a certificate against the petitioner on the basis of which petitioner was noticed by the Civil Surgeon-cum-Chief Medical Officer, Patna by letter dated 19.6.2009, as contained in Annexure-10 to show cause and his salary was stopped.

The complaint was filed almost thirteen years after and this order was issued almost fifteen years after. Even if the allegation in the complaint requires enquiry of facts, respondents have not cared to issue any notice to the then Circle Officer as to why he had issued a false genealogical certificate in favour of the petitioner. The impugned letter does not show that any action is even contemplated against the then Circle Officer. Petitioner is only sought to be made the victim of contradictory report issued by the present Circle Officer against him. Apparently, this approach of Civil Surgeon-cum-Chief Medical Officer, Patna is unconscionable.

In the counter affidavit filed by the respondents, stand is that on the complaint filed by the co-villager, as contained in Annexure-11, action has been taken. However, learned counsel for the respondents does not deny that the then Circle Officer has not been called upon to explain his conduct and no action has been initiated against him for the alleged false certificate issued by him. It is clear that respondents were not entitled to initiate any action against petitioner or stop his salary till the fact of false impersonation as son of the deceased employee was established to the hilt and also till action against the then Circle Officer is initiated and he is punished for issuing alleged false certificate.

In the circumstances, the order issued by the respondent Civil Surgeon-cum-Chief Medical Officer, Patna



contained in Memo No.3448 dated 19.6.2009, annexed as Annexure-10, is quashed. Respondents are directed to issue orders for release of entire salary of the petitioner due to him within a period of two months from the date of receipt/production of a copy of this order. In case arrears of salary is not paid to the petitioner and payment of his present salary does not resume, the Civil Surgeon-cum- Chief Medical Officer shall pay interest at the rate of 10% per annum on the arrears of salary of the petitioner from the next date after expiry of two months."

7. The respondents, therefore, cannot take punitive action against the petitioner in view of direction of this Court.

8. However, the parties may take corrective measures in accordance with law.

9. Accordingly, the present writ petition is allowed to the above extent.

(Purnendu Singh, J)

Niraj/-

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