

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8066 of 2023

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Ravi Prakash Son of Late Dharmendra Kumar Verma Resident of Saroj Kunj,
Transport Nagar, P.S.- Agamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Patna.
2. The Additional Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director in Chief (Pharmacy), Health Department, Govt. of Bihar, Patna.
4. The State Drug Controller Bihar, Health Department, Govt. of Bihar, Patna.
5. The Chairman, Bihar State Pharmacy Council, B.M. Das Road, P.S.- Pirbahore, District- Patna- 800004.
6. The Registrar, Bihar State Pharmacy Council, B.M. Das Road, P.S.- Pirbahore, District- Patna- 800004.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Shilpi Keshri, Advocate Mr. Chandra Shekhar Kumar Singh, Advocate
For the Pharmacy Council:		Mr. S. D. Yadav, Sr. Advocate
For the Respondent/s	:	Mr. Binod Kr. Yadav, SC-18

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 14-08-2024

1. The Petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, praying for issuance of a writ in the nature of Certiorari to quash an order, dated 29th of January, 2019, passed by the Bihar State Pharmacy Council (hereinafter referred to as “the Council” for short), whereby and whereunder the Petitioner was dismissed from the post of Clerk of the Council on the ground that his appointment as a Clerk of the Council was false and forged, as



his appointment was made without following any rule of recruitment.

2. This is the case of the Petitioner that in pursuance to the advertisement, dated 15th of May, 2004, published in the daily newspaper "Aaj" seeking for application from the intending candidates for appointment to the post of Clerk, the Petitioner submitted his candidature. By a letter, dated 15th January, 2004, the Council informed the Petitioner that on the basis of the recommendation of the candidates for interview, he has been selected to join the Council on the post of a Clerk. It was also directed that he would be in probation on the said post for a period of 45 days. After expiry of the probation period, Petitioner's appointment was again extended by virtue of letter dated 30th July, 2004 for a further period of 45 days. Subsequently, vide letter, bearing No. B.P.C – 395/2004, dated 9 September 2004, the Petitioner was appointed on regular basis on the unreserved post of Assistant Clerk of the Council in the pay scale of Rs 4000-6000/- with other benefits. The appointment was confirmed by the Working Committee of the Council in its meeting dated 14th September, 2004 and by letter, dated 1st December, 2004, the Postmaster, Rajendra Nagar Post Office was requested to grant permission to the Petitioner to



open an account in the said post-office. In the said letter, it was specifically stated by the Registrar of the Council that the Petitioner was appointed on the post of Assistant Clerk in the service of the Council and as other employees of the Council, an account may be opened in the said post-office in the name of the Petitioner. It is also stated by the Petitioner that his service book was also opened and maintained by the concerned department of the Council. Subsequent to his appointment, his salary was revised along with the other employee of the Council vide letter dated 22nd October, 2010. Suddenly on 25 January, 2018, the then Registrar issued an order bearing No. BPC-115/2018, dismissing the Petitioner from the post of the Clerk of the Council on the ground that he was not appointed on the said post following the rules of appointment.

3. The Petitioner challenged the said order of dismissal by filing a writ petition before this Court, bearing C.W.J.C. No 5459 of 2018. The said writ petition was disposed of by this Court vide order, dated 26th of October 2018, setting aside the order of dismissal passed against the Petitioner vide BPC-115/2018, dated 25th of January, 2018. The case of the Petitioner remanded back to the Respondents for holding enquiry with specific imputation of accusation against the Petitioner and to



take decision in accordance with law. In spite of the said order, the Council did not initiate any proceeding against the Petitioner. He was also not allowed to join his service. Therefore, the Petitioner filed a contempt application, bearing M.J.C. No 1138 of 2019 in C.W.J.C. No 5459 of 2019. When the Respondents filed their reply to the show-cause notice in the contempt petition, the Petitioner came to know about the impugned order which states that the Respondents allegedly sent several letters to the Petitioner by post but the Petitioner refused to accept the said letter. Therefore, the Respondents passed an ex-parte order, dismissing his service on the ground that he was never appointed as a Clerk of the Council.

4. It is submitted by the Petitioner that all documents relating to publication of advertisement for appointment to the post of a Clerk in the Council, selection of the Petitioner in interview, offer issued by the Council to the Petitioner, letter of regularization, opening of service book, revision of pay scale etc., are well within the custody of the Council and those documents sufficiently prove that the Petitioner is a regular employee of the Council. However, while passing the ex parte order against the Petitioner, the Respondents did not consider any such documents. The Petitioner further states that one



Public Interest Litigation, bearing C.W.J.C. No 20704 of 2021 (Uma Shankar vs State of Bihar & Ors.) was filed against the Registrar of the Council alleging, inter alia, that he was unauthorizedly holding the post of Registrar, Bihar State Pharmacy Council, even after completion of his tenure in the year 2016 itself. In the said writ petition, the Additional Director, Health Services, Government of Bihar submitted his counter-affidavit, accepting, inter alia, that the Registrar of the Council after completion of his extension period of 5 years which ended on 18th August, 2016 was appointed for the second term of 5 years by Council without obtaining previous sanction of the State Government and has been continuing to act as Registrar. After institution of the said Public Interest Litigation, the Registrar of the Council was removed from the service. Therefore, the said P.I.L bearing C.W.J.C no 20704 of 2021 was disposed of being infructuous.

5. It is the case of the Petitioner that the Registrar had no authority to issue the letter of dismissal of service against the Petitioner, dated 25th January, 2018, because after 18th of August, 2016, retention of his post of Registrar was illegal and ab initio void as the term of his office was not extended by the Government. So all orders passed during the said period by the



Registrar after 18th of August, 2016 is bad in law, inoperative and is not binding upon the Petitioner. It is further stated by the Petitioner that the Council passed a fresh order of dismissal of service against the Petitioner on 29th January, 2019 without giving any opportunity to the Petitioner of hearing. The said order is also bad in law and not binding upon the Petitioner as the impugned order, dated 29th of January 2019 was passed in violation of the Principles of Natural Justice.

6. A counter affidavit has been filed on behalf of the Respondent Nos. 5 and 6, wherein the Respondents have denied all allegations made by the Petitioner in the writ petition. It is specifically stated by the contesting Respondents that in C.W.J.C No. 5459 of 2018, the Petitioner prayed for quashing of the order, dated 25th January 2018, passed by the Respondent No. 6, i.e., the then Registrar of the Council. This Court while disposing of the above-mentioned writ petition was pleased to set aside the order dated 25th of January, 2018 with a specific direction that if the Respondents require, they may conduct an inquiry with a specific imputation against the Petitioner and take decision in accordance with law. It was further directed that the Respondents would make payment of salary to the Petitioner for the period he was not allowed to perform his duties. The



Council preferred an appeal against the said order bearing L.P.A. No. 1645 of 2018 and during the pendency of the said appeal, a fresh order of dismissal was passed against the Petitioner on 29th of January, 2019. The appeal was disposed of by the Division Bench of the Court, giving liberty to the Petitioner to challenge the validity of such decision and it is further directed that the Petitioner is not entitled to any arrears of salary as directed by the learned Single Judge in C.W.J.C. No. 5459 of 2018. The Respondents specifically plead that the Petitioner was not subjected to any process of recruitment. He has failed to produce any document to show that he was appointed against the sanctioned vacant post. The contesting Respondents further states that in compliance of the order dated the 26th of October, 2018 passed in C.W.J.C. No. 5459 of 2018, the Petitioner was asked to submit his explanation and notices were sent on 12th of November, 2018, 24th of November, 2018, 14th of December, 2018 and 3rd of January, 2019 under the registered post, but the Petitioner refused to accept such notices and failed to submit any explanation regarding his recruitment. It is also stated by the contesting Respondents that no paper was made available relating to the appointment made by the Bihar State Pharmacy Council. Especially, Petitioner was not



appointed by the Council and his letter of appointment is forged. In view of such circumstances, the application submitted by the Petitioner, dated the 31st October 2018 was rejected by the Bihar State Pharmacy Council and he was dismissed from service with effect from the 29th of January 2019.

7. The Petitioner has submitted a rejoinder to the counter affidavit filed by the Respondent Nos. 5 and 6 and reiterated his stand that the initial order of dismissal dated 25th of January, 2018 was illegal, invalid and inoperative because it was passed by the then Registrar who had no authority to issue such letters because his continuation to the post as Registrar was held illegal in the P.I.L., bearing C.W.J.C. No. 20704/ 2021.

8. I have heard the learned Advocate appearing on behalf of the Petitioner and the learned Advocate for the State Respondents. I have also perused the entire materials on record.

9. At the outset, I am tempted to note that in the counter affidavit, the Respondents Nos. 5 and 6 demanded documents relating to appointment of the Petitioner on the post of Clerk of the Council and also other documents relating to regularization of his service. It is needless to say that when a person had been discharging his duties as an employee of the Council and he was paid from the public exchequer his salary from the year 2004 to



January 2018, the Court is entitled to draw a presumption in favour of the continuity of Petitioner's service.

10. In order to prove his case, the Petitioner has produced a letter, dated 19th of May, 2004, written by the then Registrar of the Council to the Editor in Chief for publication of advertisement for contractual appointment of a Clerk in Bihar State Pharmacy Council. A copy of the advertisement which was sent for publication in the newspaper has also been annexed with the writ petition. Subsequently, by an order dated 15th of June, 2004, issued by the then Registrar, the Petitioner was appointed as a Clerk on contractual basis in the Council. He was initially appointed on probation for 45 days and again by order dated 30th of July, 2004, his appointment was extended for a further period of 45 days and again, vide order, dated 9th of September, 2004, his contractual appointment was regularized on the pay scale of Rs. 4000-6000/- with all other consequential benefits. The Working Committee approved regularization of the Petitioner in its meeting, dated 14th of September, 2004 and service book was also opened. The Respondents did not specifically deny authority and truthfulness of any of the above-mentioned documents in their counter affidavit. The aforesaid documents, at least, prima facie, suggest that the Petitioner used



to perform his duties as a Clerk in the Council and his contractual appointment was regularized by the government and accepted by the Working Committee of the Council. The office of the Registrar opened the service book of the Petitioner. After his regularization, his appointment cannot be challenged subsequently on the ground that it was made de hors the rules of appointment. The Respondents cannot demand from the Petitioner to prove the legality and validity of his appointment. It is the duty of the Respondents to prove that the appointment of the Petitioner was illegal and forged. The Respondents have failed to prove the same. On the other hand, the Respondents passed an ex parte order of dismissal from service against the Petitioner. The order dated 29th of January, 2019 runs thus:

"रवि प्रकाश से स्पष्टीकरण पत्र में मांगे गये दस्तावेज एवं नियुक्ति से संबंधित कागजात उपलब्ध नहीं कराने के उपरान्त कार्यालय में उपलब्ध संचिका से स्पष्ट है कि परिषद कार्यालय के द्वारा रवि प्रकाश की नियुक्ति से संबंधित न तो कोई विज्ञान निर्गत की गई, न ही आरक्षण रोस्टर किलिरेन्स की गई है और न ही परिषद कार्यालय (सक्षम) प्राधिकार के द्वारा नियुक्ति पत्र निर्गत की गई है।

अतः उपरोक्त तथ्यों से स्पष्ट है कि रवि प्रकाश की नियुक्ति परिषद कार्यालय में नहीं हुआ



है एवं फर्जी है। रवि प्रकाश के द्वारा नियुक्ति संबंधित अपने बचाव में कोई भी दस्तावेज समर्पित नहीं किया गया है।

उक्त के आलोक में रवि प्रकाश द्वारा समर्पित आवेदन दिनांक 31.10. 2018 को अस्वीकृत किया जाता है एवं रवि प्रकाश को परिषद की सेवा से कार्य मुक्त किया जाता है।"

11. The first paragraph of the impugned order shows that the Petitioner was asked to produce the document to prove that his appointment was made on the basis of an advertisement, keeping in view the reservation roster clearance and letter of appointment issued by the competent authority of the Council. The Petitioner in his writ petition filed an order of contractual appointment issued by the then Registrar of the Council. In the counter affidavit, the Respondents did not deny that the Registrar is not a competent authority to issue appointment letter to a contractual employee. The Petitioner also filed his letter of regularization, dated 9th of September, 2004 and the Minutes of the meeting of the Working Committee of the Council, accepting the Petitioner as a regular employee, dated 14th of September, 2004.

12. I have already stated that the Respondents did not challenge those documents to be false and forged. No specific case has been made out by the Respondents that the letter, dated



9th of September, 2004 and Minutes of the meeting of Working Committee dated 14th September, 2004, produced by the Petitioner, were also forged.

13. In absence of such specific averments made by the Respondents and considering the fact that Petitioner's service book was opened by the Registrar of the Council after regularization of his service, this Court is not in a position to accept the order dated 29th of January, 2019.

14. The impugned order is, therefore, illegal, inoperative, unjust, unfair and cannot be acted upon.

15. For the reasons stated above, the impugned order, dated 29th of January, 2019, is set aside and the matter is remitted back to the Respondents for initiating a full fledged departmental enquiry in terms of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

16. Pending departmental proceeding, in accordance with law, the Petitioner is entitled to get back his salary, payment of which shall be made to the Petitioner by the Council within a period of 21 days from the date of receipt/communication of this order.

17. If the Respondents are inclined to proceed with the departmental enquiry, such enquiry shall, positively, be



concluded within a period of six months from the date of receipt/communication of this order.

18. With the aforesaid direction, the instant petition sands disposed of, on contest, however, without cost.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	01.08.2024
Uploading Date	14.08.2024
Transmission Date	N/A

