

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.743 of 2019

In
Civil Writ Jurisdiction Case No.9119 of 2012

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Monawwar Alam S/o Md. Moniruddin Vill.- Near Chand Shah Mazar
Mohalla- Katrapar, Bihar, Sharif, P.s.- Laheri, Distt.- Nalanda

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director in Chief Health Department, Bihar, Patna
3. The Secretary Health Department, Patna
4. The Executive Director State Health Society
5. The District Magistrate-cum-Chairman District Health Society, Nalanda
6. Medical Officer In-Charge Primary Health Centre, Asthawan, Distt.-
Nalanda

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjeet Kumar Singh
For the Respondent/s : Mr.S.D.Yadav (Aag9)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

8 19-11-2024 The appellant has assailed the order dated

28.02.2019 of the learned Single Judge passed in C.W.J.C No.

9119 of 2012. In the writ petition petitioner has sought for the

following reliefs :

“That the Present Writ Petition is being



filed before this Hon'ble Court on behalf of the Petitioner for the issuance of an appropriate writ in directing/Commanding the Respondent No.5, the District Magistrate Cum- Chairman, District Health Society, Nalanda to reinstate the Petitioner in the light of the order passed by Respondent No.4 issued Vide order dated 15.12.2011 bearing File No.1-3244 (Annexure-13) on the Post of Health Manager, Primary Health Centre, Asthawan, in quashing the order dated 26.2.2011, leaving letter No.317, Contained in Annexure-12.”

2. The appellant was appointed among others to the post of Health Manager in the District Health Society on tenure appointment thereafter it was renewed from 2009 to 2012 for a period of three years. During the tenure period appellant's services were terminated on 27.02.2011 by the Civil Surgeon. It was a subject matter before the Secretary Health-cum- Executive Director who has set aside the termination order and directed for reinstatement of the appellant. However, the same has not been implemented by the Civil Surgeon. Resultantly petitioner has preferred C.W.J.C No. 9119 of 2012.

3. The learned Single Judge has not apprised that



termination of the appellant read with the reinstatement order of the Secretary Health-cum- Executive Director to the extent of limited issue was whether appellant is entitled to reinstatement in the light of decisions-directions of Secretary Health-cum- Executive Director or not. On the other hand the same has not been appreciated. That apart the appellant's services have been dispensed by the Civil Surgeon on certain alleged allegations and the same has not been enquired into. Even though appellant was not a regular holder of the post. However, even if temporary employee is involved in any alleged misconduct in that event formal domestic enquiry was warranted. Failing which there would be stigma attached to the appellant. These things have not been taken note of. Further, the learned Single Judge has committed error in not ascertaining whether similarly situated persons who are appointed initially on tenure basis and thereafter, their tenure has been extended from time to time or in service or not so as to grant relief to the appellant, subject to holding of a domestic enquiry by the concerned authority. On these counts the respondent State counsel could not apprise therefore, the appellant has made out a case so as to interfere with the order of the learned Single Judge dated 28.02.2019 passed in CWJC No. 9119 of 2012 and it is set aside.



4. Having regard to the fact that the similarly situated persons are working even to this day as a Health Manager therefore, appellant is entitled to reinstatement at par with others similarly placed Health Manager. The concerned authority-Civil Surgeon is hereby directed to reinstate the appellant into service within a period of one week from the date of receipt of this order. The appellant is entitled to 50% of the back wages from 26.02.2011 till date and thereafter, proceed to extend regular remuneration attached to the post of Health Manager. Disposal of the present L.P.A would not be hurdle for the State respondents to initiate disciplinary proceedings-domestic enquiry. If they found that appellant has committed any alleged misconduct during his tenure as on 26.02.2011 the same shall be completed within a period of six months from the date of receipt of this order and after due opportunity of hearing to the petitioner in the manner known to the law. For the reasons that Hon'ble Supreme Court time and again held that even if termination of a temporary employee is based on certain alleged misdeeds in that event formal enquiry was required to be held after giving due opportunity to such an employee. Therefore, the concerned authority is hereby directed to undertake the above exercise.



5. With the above observations L.P.A stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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