

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15368 of 2023

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Kanchan Kumar Mishra, S/o Late Nand Kishore Mishra, Resident of Village-
Mahuli, Police Station Athmalgola, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar, Patna.
2. The Executive Director, State Health Society, Patna.
3. The District Magistrate- cum- Chairman, District- Health Society, Jamui.
4. The Civil Surgeon-cum- Secretary, District Health Society, Jamui.
5. Sri Pawan Kumar D.P.O. District- Health Society, Jamui.
6. Sri Brajesh Kumar D.M.E. District Health Society, Jamui.
7. Sri Shashi Bhushan Pandey, currently posted as District Account Manager, District Health Society, Biharsharif, District- Nalanda.
8. Sri Anup Kumar Sinha Hospital Manager, Sadar Hospital, Jamui.
9. Sri Bambam Kumar, Hospital Manager, Primary Health Centre, Block Lakshmipur, District-Jamui.
10. Sri Kumar Pankaj, B.C.M. P.H.C. Jhajha, District- Jamui.
11. Sri Shivam Kumar, Data Operator P.H.C. Aliganj, District- Jamui.
12. Sri Gajenddra Singh, Lab Tech. Hajipur Sadar Hospital (previously working as Hospital Manager in Jamui).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kanchan Kumar Mishra (In person)
For the Respondent/s : Mr. Nagendra Pd. Yadav (Sc 23)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

C.A.V. JUDGMENT

Date : 08-10-2024

The petitioner Kanchan Kumar Mishra has filed this writ
petition under Article 226 of the Constitution of India, seeking the
following reliefs:-



I. Quashing of the termination order dated 17.07.2013, issued by MOIC, PHC Barhat (Respondent No. 4), which restrained him from continuing in his position as Block Health Manager.

II. A writ of mandamus directing the respondents to reinstate him in his position as Block Health Manager, along with all consequential benefits, including back wages for the period of his termination.

III. A writ of mandamus directing the respondents to consider him for reappointment, as the charges of submitting a forged mark sheet, based on which he was terminated, were found to be false, and he has since been acquitted of all charges.

2. The instant case arises from the petitioner's contractual appointment as Block Health Manager, under the District Health Society (DHS), Jamui. Petitioner was appointed following an advertisement published on 14.02.2007, which required candidates to have an MBA qualification with relevant experience. The petitioner was selected, and his contract was extended until 2013.

3. In July 2013, an FIR was lodged against the petitioner, accusing him of submitting a forged MBA mark sheet during his appointment. Based on this FIR, his contract was terminated on 17.07.2013. The petitioner challenged his



termination in CWJC No. 14648 of 2018, which was dismissed by the Hon'ble Court on 18.10.2022, on grounds of delay and laches. Petitioner then appealed the decision, and the Division Bench, in LPA No. 687 of 2022, gave him liberty to file a representation before the District Magistrate-cum-Chairman, DHS Jamui, which Petitioner did. However, the representation was rejected on 30.06.2023, prompting this writ petition.

4. On 14.02.2007, The State Health Society of Bihar published an advertisement (Annexure-P/2), inviting applications for the post of Block Health Manager. The eligibility criteria required candidates to hold an MBA degree along with two years of experience in the health sector. The petitioner applied for the position with his attested MBA certificate, as per the advertisement. On 12.03.2007 the petitioner participated in the walk in interview (Annexure.P/2), presenting his attested MBA certificate dated 11.03.2007. Following the interview, the petitioner was informed via Letter No. 103, dated 21.08.2007 that he had been selected for the post of Block Health Manager (Annexure-P/3). He was required to present himself for final certificate verification on 27.08.2007. The petitioner attended the final verification of certificates, where it was confirmed that only three MBA qualified candidates had applied for five seats in the



general category (Annexure-P/4). The petitioner received a letter dated 30.08.2007 (Annexure.-P/5) from the Civil Surgeon-cum-Secretary, District Health Society (DHS), Jamui, confirming his selection for the post of Block Health Manager at the Referral Hospital, Jhajha. He was appointed for a period of two years. On 12.01.2010, the petitioner's service was further extended by three years (Annexure-P/6), reflecting his satisfactory performance. An FIR No. 177/2013, dated 15.07.2013, was lodged against the petitioner at Jamui Police Station (Annexure.P/7), alleging that the petitioner had submitted a fabricated mark sheet during his appointment. The FIR was based on a photocopy of the marksheet, which was later alleged to be falsified. The petitioner was terminated from his position vide an order issued by the MOIC, PHC, Barhat, dated 17.07.2013 (Annexure.P/1). The petitioner contends that this order was issued by an Authority below the rank of the appointing authority, in direct violation of Article 311(1).

5. On 07.10.2013, the Investigating Officer, PW.3, Yogendra Sharma, testified that the FIR was based on a photocopy and that despite repeated requests, the original documents were never provided by the respondents (Annexure-P/8). On 15.05.2015 illegal charges were framed against the petitioner by the learned Chief Judicial Magistrate. The petitioner highlights that it was



impossible for him to participate in the 2007 walk in interview with a certificate that was attested in 2015, exposing the fabricated nature of the case (Annexure-P/10). On 23.11.2017, while the criminal case was pending, the petitioner filed a representation before the District Magistrate-cum-Chairman, DHS, Jamui (Annexure-P/13), seeking reappointment to his former post, but no action was taken. On 18.12.2021, the petitioner was acquitted of all charges by the C.J.M, Jamui in Trial No. 42/2021 (Annexure-P/12). The court held that the allegations against the petitioner were unsubstantiated and the case was based on a fabricated photocopy of the marksheet. Following his acquittal, the petitioner once again filed a representation for reinstatement on 21.12.2021 (Annexure-P/14), but the authorities failed to respond. On 19.04.2023, the Division Bench of this Hon'ble High Court, in LPA No. 687/2022 (Annexure-P/16), granted the petitioner liberty to file a representation against his termination before the District Magistrate-cum-Chairman, DHS, Jamui. On 27.04.2023, the petitioner submitted a representation in compliance with the High Court's directions (Annexure-P/17). The District Magistrate -cum-Chairman, DHS, Jamui, rejected the petitioner's request for reappointment dated 30.06.2023, citing that his acquittal was not "honorable" and hence no sufficient grounds for reinstatement



(Annexure-P/18). The petitioner submitted further representations on dated 11.07.2023 and 22.08.2023 to the State Health Society, Patna (Annexure-P/19), but no action was taken, compelling him to file this writ petition.

6. The respondents claim that the petitioner was appointed on a contractual basis for two years, starting in 2007, and his contract was extended for another three years in 2011. The verification of the petitioner's certificates revealed that the marks on his MBA marksheet did not match the official records of L.N.Mishra College of Business Management. The petitioner was alleged to have submitted a forged marksheet with inflated scores. Based on this discrepancy, the petitioner's contractual appointment was terminated on 17.07.2013 by the MOIC, PHC Barhat, and an FIR was lodged against him. The respondents stated that the petitioner's contractual appointment had already expired and the petitioner had waited five years before challenging his termination. Therefore, the High Court dismissed his writ petition bearing CWJC No. 14648 of 2018 on 18.10.2022, due to delay and laches. Despite the petitioner's acquittal in the criminal case, the respondents contended that the acquittal was not honorable and that the petitioner cannot claim automatic reinstatement based on it. The District Magistrate after reviewing the representation,



found that the petitioner's contractual term had expired and his acquittal did not entitle him to reinstatement.

7. The learned counsel for the petitioner stated that the termination was illegal and in violation of Article 311, as the MOIC, PHC, Barhat was not an authorized Authority to issue such an order. No departmental inquiry or show cause notice was given before his termination, violating the principles of natural justice. The FIR was based on a fabricated photocopy and the Chief Judicial Magistrate, Jamui, acquitted him of all charges, establishing that the allegations against him were false.

8. The hearing of the writ petition was conducted by the petitioner in person, where argues that the petitioner is entitled to reinstatement and back wages, because his acquittal proves his innocence. The petitioner contends that several other employees with criminal cases are still working in the District Health Society, indicating bias and unequal treatment in his case.

9. The learned counsel for respondents argue that the petitioner's contractual appointment had already expired by the time of his termination and he has no legal right to continue in the post. The verification process revealed that the petitioner's mark-sheet was forged and hence his termination was justified. The



petitioner's acquittal was not honorable and the respondents are not obligated to reinstate him based solely on the acquittal.

10. The petitioner's delay of five years in filing the writ petition makes him ineligible for the relief sought, as the High Court had already dismissed his earlier writ petition on ground of delay and laches. The petitioner's claim for back wages and reinstatement cannot be sustained as his contract had already expired and his acquittal does not automatically grant him the right to reappointment.

11. Upon careful consideration of the facts and evidence, the Court finds that the termination of the petitioner was carried out based on an FIR alleging submission of a forged document. While the petitioner was acquitted of criminal charges, the District Magistrate's decision to reject the petitioner's reinstatement was based on the fact that the acquittal was not honorable.

12. Contractual employment by its very nature ends with the expiry of the contract period. The petitioner's contract had already expired by 2013 and the respondents had no obligation to renew it, especially after the verification process revealed discrepancies in his documents.

13. The petitioner's delay of five years in challenging his termination was a significant factor in the High Court's earlier



dismissal of his petition. This delay suggests that the petitioner slept over his rights, weakening his case for equitable relief.

14. The petitioner submits that the documents relied upon to terminate his employment, specifically the photocopy of the marksheet alleged to be forged, were never properly brought to his attention during the verification process and he was not given a meaningful opportunity to contest or challenge the veracity of those documents, prior to his termination.

15. There is no material on record to indicate that the petitioner was informed of the discrepancies in the marksheet or given a chance to respond to the findings before the issuance of the termination order on 17.07.2013. The verification process initiated by the Civil Surgeon-cum-Secretary, DHS, Jamui with L.N.Mishra College of Business Management did not include any formal communication to the petitioner or an opportunity for him to explain the alleged inconsistencies.

16. As per the principles of natural justice, especially the rule of audi alteram partem (hear the other side), it is imperative that a person is given the opportunity to respond to any adverse evidence before a punitive action, such as termination of employment is taken. In this case, the petitioner was not given any opportunity to address the allegations or participate in a



departmental inquiry, where he could defend himself against the charges of forgery.

17. The denial of such an opportunity constitutes a violation of the petitioner's right to procedural fairness. Without affording the petitioner a chance to dispute the documents or findings against him, the termination decision is rendered procedurally unsound and unjust.

18. Following the petitioner's acquittal by the Chief Judicial Magistrate, Jamui, on 18.12.2021, which unambiguously established that the allegations of submitting a fabricated marksheet were unfounded, the petitioner was not given a proper opportunity to have the documents involved in his termination reconsidered. Despite the acquittal, the District Magistrate-cum-Chairman, DHS, Jamui, in its decision dated 30.06.2023, denied the petitioner's request for reinstatement, reasoning that the acquittal was not honorable.

19. The petitioner contends that his acquittal in the criminal proceedings should have triggered a reassessment of the evidence that led to his termination, particularly in light of the exoneration. The respondents' failure to review or reassess the documents after the criminal case concluded in favor of the



petitioner is a clear denial of his right to a fair post acquittal consideration.

20. The petitioner had filed multiple representations requesting that his case be reconsidered in light of his acquittal, but these were summarily rejected without any due process or proper inquiry into the status of the documents and the validity of the previous termination decision.

21. The failure to provide the petitioner an opportunity to present any new evidence or explanations after his acquittal and the refusal to reconsider the documents in question, violate the principles of natural justice. The respondents should have re-examined the entire matter, especially the documents that were the basis of the termination before rejecting the petitioner's request for reinstatement. Their refusal to do so demonstrates an arbitrary approach, denying the petitioner his legitimate right to procedural fairness post acquittal.

22. In light of the above reasoning, this Court concludes that the petitioner has establish the legal right to his reinstatement or back wages. The termination order issued by the respondents is quashed and set aside and the petitioner's writ petition is accordingly allowed on contest.



23. The respondents/authorities are directed to reinstate the petitioner with all his consequential financial benefits.

24. There shall be no order as to costs.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	N.A.F.R.
CAV DATE	05.09.2024
Uploading Date	
Transmission Date	

