

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1579 of 2019

In
Civil Writ Jurisdiction Case No.15913 of 2011

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Yogendra Prasad Son of Late Jaglal Sah @ Jagalala Sahri a resident of Village and P.O.- Jalpura, P.S.- Koilwar, Dist- Bhojpur. At present working as Dresser in T.B. Hospital, Koilwar, Dist- Bhojpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Health Commissioner to the Government of Bihar, Patna.
2. The Director-In-Chief, Department of Health, Bihar, Patna.
3. The Superintendent, T.B. Hospital, Koilwar, Dist- Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. A.B. Ojha, Sr. Adv. Mr. Nitesh Kumar, Adv.
For the State	:	Mr. Vinay Kirti Singh, Sr. Adv. Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 26-04-2024

The present LPA is directed against the order dated 09.09.2019 passed by learned Single Judge in CWJC No. 15913 of 2011 whereby and whereunder writ petition filed by the present appellant has been dismissed.

2. In civil writ jurisdiction, the appellant has prayed for the following relief(s):-

*That this is an
application for issuance of a writ of certiorari*



to quash the order dated 21.02.2011 bearing Memo No. 377 and to direct the respondents to make payment of his regular salary with effect from the date of regularization of the petitioner's services except for the period from 17.01.89 to 12.3.94 when he was ailing due to paralytic attack and was allowed to join on 13.08.94 with any other relief to which he may be found entitled to.

3. Briefly stated the facts of the case are that appellant was engaged by the respondent no. 3 as a Dresser on daily wages on 01.12.1982 and worked till 31.12.1988 in the T.B. Hospital, Koilwar. It is further claimed by the appellant that by the order no. 1037 dated 31.12.1988 his service was regularized and he was appointed as Dresser by the respondent no. 3. It is further claimed by the appellant that unfortunately the appellant got paralytic attack and he was allowed to join the service after recovery from paralytic attack. The appellant moved this Court several times regarding the payment of salary since 19.12.1988. Various writ petitions had been referred to the concerned authority earlier on account of lack of details. In order dated 19.07.2010 passed in CWJC No. 14403 of 2002 the learned Single Judge



has recorded as follows:-

"In that view of the matter, when the petitioner has himself not been specific about his relief, this court, at best, can only give him liberty to now raise his demand before the Director-in chief, Health Department, who would look into the relevant records as also the earlier report submitted in the matter for deciding the entitlement of the petitioner either in the matter of regularizing the period of his absence on account of illness in accordance with rules and/or payment of salary for the work actually performed by the petitioner.

In order to expedite the matter, the petitioner is given liberty to file a self-contained representation including copy of this order and the Director-in-chief of Health Department will take his decision by passing a final order within a period of six months from the date of receipt/production of a copy of this order.

With the aforementioned observations and direction, this application is disposed of."

4. In the said background, appellant approached the concerned authority by filing his representation dated 06.08.2010. The respondent no. 2 rejected the said representation on the ground that appellant did not work for a single day and payment was never made by the said institution in favour of the appellant. In the said representation, it has also been noted that neither joining was



allowed nor was appellant asked to do his duty. It is crystal clear that there was no payment made in respect of appellant and all the claims raised by the appellant vide representation dated 06.08.2010 was rejected by the respondent no. 2 by virtue of Annexure-1 to the writ petition. Thereafter, the appellant challenged Annexure-1 before this Court by filing writ petition which was dismissed by the learned Single Judge observing that claim raised by the appellant is not enforceable. Being aggrieved by the order of the learned Single Judge, the present LPA has been filed.

5. Learned counsel for the appellant has submitted that impugned order passed by the learned Single Judge is not justified and legal as the material available on record has not been appreciated. Learned counsel further submitted that appellant came to join the concerned office with medical record after long ailment of paralysis but the said fact has not been appreciated by the learned Single Judge while considering the claim of joining of the appellant. It has further been submitted that the learned Single Judge has also not appreciated Annexure-1 to the writ petition which is without any basis. The contention of appellant's counsel is that the claim of the appellant is based on separate register but



the same has not been taken into consideration by the learned Single judge. He further submitted that report of Dr. Gita Kumari, Superintendent of T.B. Hospital, Koilwar, Bhojpur (Annexure-4 to the writ petition) was never challenged but the same has also not been taken into account by respondent no. 2. He further submitted that the learned Single Judge has not appreciated any of the materials produced on behalf of the appellant while passing the impugned order.

6. Counter affidavit has been filed on behalf of respondent no. 2 while producing Annexures-A to D. In para 8 of the counter affidavit, it has been submitted that petitioner never performed any duty nor was ever engaged on daily wages basis and the petitioner has wrongly mentioned the period of working on daily wages and he was never paid any single farthing from the Office of Superintendent, T.B. Hospital, Koilwar (Bhojpur). In para 9, respondent no. 2 has submitted that the petitioner was not a daily wages worker in the said hospital. In para 11 it has been asserted that there was no vacant post of Dresser and petitioner was not supposed to be appointed against a non-existent post.

7. vide order dated 06.03.2024 direction was given by this court as to whether any disciplinary proceeding



has been initiated against the appellant under Bihar CCA Rules, 2005 or not and in the light of said direction in para 12 of the counter affidavit respondent no. 2 has submitted that petitioner was not a regular employee of the T.B. Hospital, Koilwar, thus, no disciplinary proceeding was initiated under the Bihar C.C.A. Rules, 2005 against the petitioner. In para 13 of the counter affidavit respondent no. 2 has also disputed the claim of joining of the petitioner that how cleverly forged appointment letter dated 31.12.1988 has been prepared.

8. Learned counsel for the appellant did not produce any appointment letter or any other document which shows that his service was regularized on particular date and he has also not produced any document to show that he was appointed on particular post. On the other hand, learned counsel for the respondents has submitted that neither the appellant was engaged on daily wages post nor was his service regularized and the claim of appellant is nothing but a bald statement which is not supported by any authenticated document.

9. In the light of aforesaid facts and circumstances as well as material available on record, it is clear that the claim of the appellant is bereft of merit and



same is not supported by any authenticated document. In the absence of any document regarding appointment or regularization of his service, the appellant has not made out a case so as to interfere with the impugned order dated 09.09.2019 passed by learned Single Judge.

10. Accordingly, the present LPA stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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