

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1067 of 2024
In

Civil Writ Jurisdiction Case No.5728 of 2021

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1. The State of Bihar through Principal Secretary, Health Department, Patna.
 2. The Special Secretary, Health Department, Patna.
 3. The Principal, Govt. Tibbi College and Hospital, Kadamkuan, Patna.

... .. Appellants

Versus

Md. Zahid Iqbal, S/o Md. Shahabuddin, Resident of Mohalla- Harion Nagar, Sector-2, P.S.- Phulwarisharif, District- Patna, the then working as Parwachak (Reader cum-Associate Professor), Govt. Tibbi College and Hospital, Kadamkuan, Patna.

... .. Respondent

Appearance :

For the Appellants	:	Mr. Arvind Kumar, AC to SC-18
For the Respondent	:	Mr. Satish Chandra Jha, Advocate
		Md. Ataul Haque, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 22-07-2025

The present intra court appeal is directed against the order dated 18.07.2024, passed by the learned Single Judge in CWJC No.5728 of 2021, whereby the said writ petition filed by the respondent, herein was allowed and the Appellant-State was directed to reinstate the writ petitioner in service with retrospective effect with all admissible allowances and grant other consequential benefits to him as well.



2. As per the facts on record, respondent was appointed on the post of Reader-cum-Associate Professor in the Government Tibbi College and Hospital, Patna on contractual basis on 21.04.2014, after holding a walk-in interview. He worked as *Pravachak* for six years and no drawbacks were found during the period of his service. On 10.04.2019, Health Department, Government of Bihar, issued an order stating that the doctors appointed on contractual basis shall continue to work till they attain the age of superannuation or regular appointment, whichever is earlier. On 05.11.2019, a show cause bearing letter No.1481 AYUSH was issued to the respondent by Department stating the appointment of respondent herein was made without obtaining roster clearance. The respondent made reply to the show cause notice on 14.11.2019, but the same was not considered by the Department and he was removed from the service vide Letter No.1618 AYUSH dated 03.12.2019 and subsequent Letter No.860 dated 04.12.2019 on the ground that his appointment was contrary to roster point.

3. The respondent challenged the Notice dated 05.11.2019 by filing CWJC No.25452 of 2019 which was allowed setting aside the termination orders contained in letters dated 03.12.2019 and 04.12.2019. The respondent was



accordingly reinstated in service with retrospective effect. Again, for same ground of roster clearance vide letter No.820 dated 09.11.2020, a show cause notice was issued to respondent to make his representation within one week (Annexure '9' to the writ petition). The respondent made his reply on 18.11.2020, the Department ignored the reply and passed a reasoned order vide Memo No.GTC/U1-07/2019-933 dated 29.12.2020 by Department holding that his appointment was in breach of roster clearance and the respondent was terminated from the service with effect from the date of issuance of the said order.

4. The learned counsel for the respondent submitted before the learned Single Judge that the respondent was appointed as *Pravachak* against ideal roster point No.5, which was for unreserved and general category, and this respondent belongs to unreserved category. Further, it was submitted by the respondent that in order contained in letter no.933 dated 29.12.2020 by the Government College had given wrong statement about respondent being paid salary since 04.12.2019 to 24.03.2020, but the four months' salary has not been paid.

5. The learned Single Judge, after considering the rival contentions of the parties, allowed the writ petition, on the point that copy of the ideal roster letter was not served by the



Department to the respondent. The learned Single Judge had set aside the impugned letter dated 29.12.2020 and allowed this writ petition vide order dated 18.07.2024.

6. Mr. Arvind Kumar, learned counsel for the state, has submitted that the impugned order dated 18.07.2024 passed in CWJC No. 5728/2021 by the learned Single Judge is bad in law as well as in fact. It is further submitted that the impugned judgment was passed in casual manner by learned Single Judge. It is further submitted that the learned Single Judge failed to notice and appreciate the reasons for termination of contractual service of the petitioners, as the Department's letter No.852 dated 17.09.2014 clearly mentions that roster clearance for making the said appointment was under process, which implies that the learned Single Judge has committed a gross error by ignoring the fact in reasoned order itself. It was clearly mentioned that the then Principal of the College had been proceeded departmentally against him for making appointments against the policy of reservation. It is further submitted that the learned Single Judge completely ignored the fact that the appointment of the petitioner and two others had been made without roster clearance which was in process as evident from the Health Department's letter No. 852 dated 17.09.2014 and



fact that the then Principal of College was imposed punishment on charge of making appointment in question without roster clearance. It is further argued that the learned Single Judge had no material available on record but wrongly arrived at the conclusion by recording that “It appears that the initial appointment of the petitioner was in accordance with roster point”. It is further argued that the learned Single Judge has failed to appreciate the fact that the initial engagement of the respondent made in 2014 was itself bad in view of absence of roster clearance and thus, the impugned judgment and order passed by learned Single Judge is fit to be set aside for the ends of the justice.

7. We have heard the learned counsel for the appellant and have also gone through the impugned order passed by the learned Single Judge.

8. The question that requires consideration by this Court is whether the impugned order passed by the learned Single Judge requires any interference in the present appeal.

9. In the present matter, the appellant while filing his counter affidavit before the writ court, has nowhere stated that the vacancy on which the respondent/writ petitioner was appointed, was not available for General category, rather it was



reserved for other category and the said appointment of the writ petitioner, who is the respondent herein, was made on the post of reserved category. The only contention of the appellant is that at the time of the appointment of the respondent (writ petitioner), roster clearance was under process, thus, such appointment to be made without roster clearance.

10. In our considered opinion, if the appointment of the respondent has not been made against the vacancy available for reserved category and thereby causing no substantive prejudice to the candidate of reserved category in public employment, the appointment cannot be held illegal. Mere certain irregularities in this process of appointment on the part of the appointing authority does not itself make the appointment bad unless it may cause prejudice to the right of appointment of other candidate. It is also not the case of the appellant that, even after roster clearance, it was found that the Respondent being appointed on such roster point, which was marked for reserved category candidate.

11. In view of the facts and discussions made above, we do not find any merit in this appeal. Therefore, the order of the learned Single Judge does not require any interference.



12. Accordingly, this appeal stands dismissed.

(Sudhir Singh, J.)

(Ramesh Chand Malviya, J.)

Gaurav Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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