

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7282 of 2020

1. Dr. Vikash Kumar Son of Late Umakant Tiwari, Resident of Near Raghubir Sadan, New Chandmari, P.S.-Motihari Town, District-East Champaran.
2. Dr. Ritesh Kumar Singh, Son of Chandra Madhav Singh, Resident of Civil Line, Bari Bazar, P.S.-Buxar, District-Buxar.
3. Dr. Amit Kumar Pandey, Son of Shri Kedar Nath Pandey, Resident of Village-Dhanibar, P.S.-Amba, District-Aurangabad.
4. Dr. Rahul Singh, Son of Pramod Prasad Singh, Resident of Bishwanath Nagar, P.S.-Town Thana, District-Begusarai.
5. Dr. Alok Ranjan, Son of Bishwanath Singh, Resident of Near Kali Asthan at Pokharia, P.S.-Begusarai, District-Begusarai.
6. Dr. Nafees Ahmad, Son of Atiqur Rahman, Resident of Mohalla-Baswaria, Michael Colony, P.S.-Bettiah, District-West Champaran.
7. Dr. Zaryab Azam, Son of Farooque Azam, Resident of Mohalla-Belbanwa, P.S. Motihari Town, District-East Champaran.
8. Dr. Sudhanshu Shekhar Mishra, Son of Dr. Indra Deo Mishra, Resident of Ramdas Bagahi, P.S.-Kateya, District-Gopalganj.
9. Dr. Sneh Bursha, Wife of Dr. Rajeev Kumar, Resident of Club Road Near Sai Mandir, P.S.-Town Thana, District-Aurangabad.
10. Dr. Kamleshwar Pandey, Son of Dr. Devidutta Pandey, Resident of Kopa, P.S.-Kopa, District-Saran (Chapra).
11. Dr. Murari Sharan, Son of Late Swaminath Tiwari, Resident of New Bus Stand Road, P.S.-Bettiah, District-West Champaran.
12. Dr. Awanish Dhvaj Singh, Son of Late Upendra Dhvaj Singh, Resident of Mohalla-Reli Bazar, Ram Nagar, P.S.-Ram Nagar, District-West Champaran.
13. Dr. Md. Fakharuddin, Son of Late Abul Fatah, Resident of Wahida Mansion, Balua Tal, P.S.-Town Thana, District-East Champaran.
14. Dr. Dinesh Kumar, Son of Shri Bishwanath Prasad, Resident of Indra Nagar, Near Swaraj Tractor Agency, P.S.-Chhatauni, District-East Champaran (Motihari).
15. Dr. Amit Kumar, Son of Dr. Tripurari Charan, Resident of Near Sant Augustin School, West Lohanipur, P.S. Kadamkuan, District-Patna.
16. Dr. Sharique Raza, Son of Quaim Raza, Resident of Mohalla-Urdu Bazar, P.S.-Laheriya Sarai, District-Darbhanga.
17. Dr. Prakash Ranjan, Son of Late Sahdeo Singh, Resident of Kapasiya, P.S.-Mufassil Town, District-Begusarai.
18. Dr. Kunal Kant, Son of Dr. Rama Kant Tiwari, Resident of Pipra Station, P.S.-Pipra (Motihari), District-East Champaran.
19. Dr. Priyaranjan Kumar, Son of Krishnandan Chaudhary, Resident of Purani Bazar Chowk, Shukla Road, Sita Market, P.S. Town Thana, District-Muzaffarpur.
20. Dr. Vivek Kumar, Son of Akhilendra Deo, Resident of Majhauliya Road,



P.S.-Kaji Mohammadpur, District-Muzaffarpur.

21. Dr. Zeyauddin Ahmad, Son of Late Wazir Hassan, Resident of Ward No. 24, House No. 397, Shiv Nagar, Opposite Railway Station, P.S. and District-Gopalganj.
22. Md. Azhar @ Dr. Azhar Iqbal, Son of Dr. Moizuddin, Resident of Mashraf Chowk, Ward No. 38, Saharsa Basti, P.S. Saharsa, District-Saharsa.
23. Dr. Rajesh Ranjan, Son of Prabhakat Thakur, Resident of Aurahi, P.S.-Barahara Kothi, District-Purnea.
24. Dr. Ghazanfar Ali, Son of Zafar Ahmad Khan, Resident of Near Khan Lodge, Mohalla-Faizullah Khan, P.S.-Laheriya Sarai, District-Darbhanga.
25. Dr. Arvind Kumar Singh, Son of Thakur Singh, Resident of Nai Basti Mahadeva, P.S. and District-Siwan.
26. Dr. Shyam Kishore, son of Mohan Prasad Singh, Resident of Chakumar, P.O.-Adalpur, Singhara, Buzurg, P.S.-Dishiauta, District-Vaishali.
27. Dr. Nishant Kumar Bhaiya, Son of Shri Pradeep Kumar Bhaiya, Resident of Sai Nilayam Apartment, Flat-1B, Police Colony, Anisabad, P.S.-Gardanibagh, District-Patna.
28. Dr. Bibhuti Anand, Son of Shree Chandra Prakash Jha, Resident of Mithila Colony, Road No. 14-A, P.S. Rajiv Nagar, District-Patna.
29. Dr. Putul Kumari, Wife of Dr. Pawan Mishra, Resident of Sahjanand Nagar, Matihani Road, Hemra, P.S. Town Thana, District-Begusarai.
30. Dr. Saurabh Kumar, Son of Ajay Kumar Sinha, Resident of B.D.O., Block Road, Ara, P.S.-Nawada, District-Bhojpur.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary Department of Health, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Executive Director, Bihar State Health Society, Sheikhpura, Patna.
4. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 10738 of 2020

Dr. Shahina Shaukat, Wife of Md. Mehtab Alam, Resident of Shahdultapur, Near DAV Public School, Sir Saiyad Colony, Malighat, Post-H.P.O., Muzaffarpur, P.S.-Ahyapur, District-Muzaffarpur, Bihar-842001.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.



2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Executive Director, Bihar State Health Society, Sheikhpura, Patna.
4. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
5. The Civil Surgeon Cum Chief Medical Officer, Muzaffarpur.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 7282 of 2020)

For the Petitioner/s : Mr.P.K. Shahi, Sr. Advocate
: Mr.Vikas Kumar
For the Respondent/s : Mr.Ajay Behari Sinha (GA 8)
: Mr.Kishore Kumar Sinha
: Mr.Shashi Shekhar

(In Civil Writ Jurisdiction Case No. 10738 of 2020)

For the Petitioner/s : Mrs.Nivedita Nirvikar, (Sr. Advocate)
: Mr.Zainul Abedin
: Mr.Shailesh Kumar
For the Respondent/s : Mr.Nagendra Prasad Yadav (SC 23)
: Mr.Kishore Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 08-10-2021

Since both the writ applications involve common issue, they have been heard together and in the facts and circumstances of the case are being disposed of by the present common judgment and order.

2. Heard Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioners and Mr. Ajay Behari Sinha, learned GA-8 appearing on behalf of the State in C.W.J.C. No. 7282 of 2020. Mrs. Nivedita Nirvikar, learned Senior counsel has represented the petitioner and Mr. Nagendra Prasad Yadav, learned SC-23 appearing for the State in C.W.J.C. No. 10738 of 2020. Mr.



Kishore Kumar Sinha has appeared for the Bihar State Health Society.

3. There are 30 petitioners in C.W.J.C. No. 7282 of 2020 and one in C.W.J.C. No. 10738 of 2020. They are aggrieved by an order issued vide Memo No. 256 dated 25.02.2020 by the Health Department, Government of Bihar whereby a decision has been taken by the State Government to terminate all contractual appointments of Dentists consequent upon regular appointments having been made by the State Government of Bihar. The petitioners claim that they hold requisite qualification and are registered under the provisions of the Dentist Act, 1948. Pursuant to different advertisements for appointment on contractual basis they were engaged after following a process of selection. Initially they were appointed on daily wage basis and were allowed to work for two days in a week. Subsequently, a decision was taken in 2011 to pay Rs. 30,000/- per month to the Dentists. They also assert that the Dentists appointed on contractual basis were claiming regularization of their services and in order to press their demands, such Dentists had resorted to strike which resulted into an agreement between the representatives of the Dentists on the one hand and the Principal Secretary, Health Department on the other. The minutes of the meeting held on 10.03.2015 has been brought



on record by way of Annexure 5 to the writ petition. It is further case of the petitioners that it was resolved in the said meeting that legal opinion from the learned Advocate General on the proposal of the body of the Dentists for regularization of their services shall be obtained and the department shall, on the basis of said legal opinion would send accordingly a proposal to the State Government. It was also resolved that no penal action shall be taken against such Dentists who had resorted to strike.

4. Noticeably, the Bihar Dentist Service Rules, 2014 framed under the *proviso* to Article 309 of the Constitution of India was already notified on 14.10.2014. The opinion of the learned Advocate General dated 30.03.2015 has been brought on record by way of Annexure 7 to the writ application. As no privilege has been claimed on behalf of the respondents in relation to legal opinion of the Advocate General being brought on record, the Court is refraining from making any comments thereon. The said opinion is apparently referable to the 'Doctors' and there is clue that the said opinion was referable to Dentists also.

5. The Bihar Public Service Commission (in short Commission) subsequently came out with an advertisement dated 25.03.2015 inviting applications for appointment of 558 Dentists in basic grade. From the selection process prescribed in the



advertisement, which has been brought on record by way of Annexure 6 to the writ application, it appears that out of total 100 marks for the selection process weightage of 25 was given against work experience for Dentists working in Government Hospitals.

6. The petitioners are relying on a communication dated 31.03.2015 addressed by the Principal Secretary, Health Department, Government of Bihar to the representatives of the Doctors including Dentists working on contract basis wherein it was indicated that if after completion of the process of selection by the Commission, some of the Doctors/Dentists did not get selected, steps would be taken for their appointment after framing a policy in accordance with law for regularization of such Doctors/Dentists who possess the requisite qualification and were working on contractual, basis for long period of time.

7. This appears to be an admitted fact that the selection process for appointment of Dentists pursuant to the said advertisement dated 25.03.2015 came to be completed. Further, all Dentists working on contractual basis in the State of Bihar came to be selected for their regular appointment except 73 including these petitioners. Despite regular appointments having been made, since the remaining Doctors appointed on contractual basis were being permitted to continue, the impugned order dated 25.02.2020 came



to be issued by the Department of Health, Government of Bihar. The petitioners are assailing the said order mainly on the ground that the action of the State is against its own promise to regularize services of all contractual Dentists. Heavy reliance has been placed on an assurance given by the Health Minister, Government of Bihar on the floor of the Bihar Legislative Assembly wherein it was disclosed that cases of those 73 Dentists whose names could not be recommended by the Commission because of their lower merit position in the selection process, could be considered for their regularization only after appointment of the Dentists already recommended by the Commission. It is the petitioners' case that in breach of the promise made on behalf of the State Government by the Principal Secretary, Health Department, Government of Bihar that a policy would be formulated for regularization of Dentists working on contractual basis, no policy has been framed, so far. Further, despite assurance given at the floor of the House by the Health Minister, there is no consideration on regularization of 73 Dentists working on contractual basis. On the contrary, the impugned order has been issued by the Health Department, Government of Bihar, which requires termination of contractual engagements of the Dentists at different places.



8. The petitioners are also relying on the resolution of the State Government issued vide Memo No. 12534 dated 17.09.2018 by the General Administration Department, Government of Bihar which contains decision of the State Government to accept recommendation of a committee constituted to examine the question of permitting the contractual employees to continue either till they attain the age of superannuation or till completion of the scheme for which they are engaged, whichever is earlier. The Committee had noticed that many employees working on contractual basis might not get successful in examinations/interviews/other tests for regular appointments. In such case, if posts are vacant even after regular appointments, instead of making fresh appointments on contractual basis, those contractual employees who do not qualify in the regular selection process can be allowed to be adjusted. Relevant portion of the said recommendation which, it is said, has been accepted by the State Government reads as under:-

"यहाँ यह भी उल्लेखनीय है की नियमित नियुक्तियों के लिए ली गयी परीक्षा/साक्षात्कार/अन्य जांच में कई संविदाकर्मी सफल नहीं होते हैं, ऐसी स्थिति में अगर नियमित नियुक्तियों के उपरांत भी पद खाली हैं तो उन पर नए सिरे से संविदा के आधार पर नियुक्ति न कर नियमित नियुक्तियों की प्रक्रिया में असफल संविदा कर्मियों को रखा जा सकता है।"



9. It is noted that when this matter was taken up on 23.07.2021, this Court had desired the State Government of Bihar to inform as to within what period of time the process of selection for filling up of the remaining vacant posts of Dentists shall be completed in view of the policy decision of the State Government, as disclosed in the supplementary counter affidavit.

10. In the second supplementary counter affidavit filed on behalf of the respondent State of Bihar it has been stated that vacant posts of the Dentists shall be filled up within a period of four months:-

| Sl. | Stage of Appointment | Expected time |
|--------------|--|----------------------|
| (i) | Compilation of vacancy and roster determination | 15 days |
| (ii) | (i) Approval of the General Administration Department (ii) Forwarding the requisition | 15 days |
| (iii) | Expected time to be consumed in Commission | 3 months |
| | Total | 4 Months |

11. The Department has furnished to this Court the tentative period which each step will take to fill up the existing vacancies of Dentists in the State on regular basis.

12. Mr. Ajay Behari Sinha, learned GA-8 appearing on behalf of the State of Bihar, on the basis of instructions which he has received, has submitted that there are altogether 571 sanctioned posts of Dentists sanctioned in the State of Bihar



against which 525 Dentists are working on regular basis. Accordingly, there are 46 posts vacant for which the department has received roster clearance from the General Administration Department, Government of Bihar. He has also submitted that the tentative period within which the selection process was to be completed, as indicated in the second supplementary counter affidavit, may vary because of certain developments as some necessary amendments are required in the Bihar Dentists Service Rules, 2014.

13. Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioners has placed reliance on the Supreme Court's decision in case of *Surya Narayan Yadav v. Bihar State Electricity Board and Others* reported in (1985) 3 SCC 38 to contend that the State of Bihar is bound by its representation made to the Dentists and at this juncture they cannot turn around to decline the fruits of the agreement arrived at between the representatives of the Dentists and the State of Bihar. Reliance has also been placed on a recent Supreme Court's decision rendered on 01.12.2020 in Civil Appeal Nos. 3860/3862 of 2020 in case of *State of Jharkhand and Ors. v. Brahmputra Metallics Ltd., Ranchi and Ors.* (2020 SCC Online SC 968) to contend that the respondents State of Bihar is bound by operation of the doctrine of



promissory estoppel, which is equitable in character, and it cannot resile from the promise earlier made by them to the Dentists working on contractual basis to regularize their service. Mr. Shahi has also relied on single Bench decision of Delhi High Court dated 22.07.2021 in W.P. (C) No. 8956 of 2020 (*Najma v. Government of NCT of Delhi*) to bring home his point that the State cannot act against its own promise.

14. Mrs. Nivedita Nirvikar, learned Senior counsel appearing on behalf of the petitioner in C.W.J.C. No. 10738 of 2020 while broadly adopting the argument advanced by Mr. Shahi has submitted that the petitioner of the said case was working on contractual basis under Civil Surgeonship of Muzaffarpur. She has referred to a communication dated 15.02.2021 addressed by the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur to the Health Department, Government of Bihar whereby he had informed that as since one post of Dentist was still vacant because of absence of regular appointment against that post, the petitioner's service was being taken on contractual basis at Primary Health Centre, Mushahri. She has submitted that admittedly the post against which the petitioner was working on contractual basis, has not been filled up so far on regular basis and, therefore, no public purpose would be served by terminating the



petitioner's service on contractual basis, on the contrary, it would be against public interest.

15. Mr. Ajay Behari Sinha, learned GA 8 has argued that contractual employees do not have any right to hold a post after regular appointments are made. He has submitted that since regular appointments have been made on the basis of recommendation made by the Commission in accordance with the statutory rules, the persons who were working on contractual basis and who could not succeed, despite due weightage and preference having been given in the process of selection, cannot claim by way of right to continue on the respective posts.

16. There cannot be any dispute as regards legal position that an employee working on contractual basis does not have any right to hold the post after the termination of contract either with the lapse of period of contract or with filling up of the posts against which he was working, on regular basis by following a process of selection in accordance with statutory Rules. In such situation, the Dentists, who were working on contractual basis against the posts which have been filled up on regular basis, cannot claim by way of right, their continuance on contractual basis.



17. In my considered opinion, the Supreme Court's decision in case of *Surya Narayan Yadav* (supra) has no application in the facts and circumstances of the present case. In case of *Surya Narayan Yadav* (supra), noticing repeated representations by the Electricity Board to its employees that its ex-cadre trainee employees would be permanently absorbed in cadre without taking any examination and would be confirmed after two years of probation and, the fact that relying upon such representation some of the trainees did not seek employment elsewhere, the Supreme Court held that the Board was bound to honour its representations and assurances and regularize the appointments of the trainees. On the contrary, in the present case, an assurance was given only to the effect that the process of appointment would be completed after obtaining legal opinion from the learned Advocate General.

18. Learned Advocate General dealing with the cases of the Doctors had opined that most of the Dentists would qualify and, in case, some failed to find their position in the merit list, the Government may take suitable steps in accordance with law to regularize their services. Subsequent communication through letter dated 31.05.2015 addressed to the representatives of the contractual Doctors/Dentists also discloses the Government's



intention to frame a policy for regularizing services of the Doctors working on contractual basis. There was no assurance given to the petitioners and similarly circumstanced persons that their services shall be regularized. Further, the resolution of the General Administration Department, Government of Bihar dated 17.09.2018 is not an assurance for absorption of the Doctors/Dentists working on contractual basis. It simply permits the persons working on contractual basis, who do not succeed in the process of selection, to be allowed to continue, instead of making fresh engagement on contractual basis.

19. The doctrine of promissory estoppel and the Supreme Court's decision in case of *Brahmputra Metallics Ltd., Ranchi* (supra) have no application in the facts and circumstances of the present case. For invoking the doctrine of promissory estoppel, there has to be a promise based on which the party concerned must have acted to its prejudice. In case of *Monnet Ispat And Energy Ltd v. Union Of India And Ors* reported in (2012) 11 SCC 1, which has been relied upon in case of *Brahmputra Metallics Ltd., Ranchi* (supra), the Supreme Court lucidly enunciated that the doctrine of promissory estoppel cannot be invoked where the decision of the public authority is founded against a provision of law.



20. In the present case, as a matter of fact, in order to accommodate the Dentists working on contractual basis, more than adequate weightage was given by prescribing 25 marks out of 100 for their work experience in the process of selection. 558 posts were advertised. Despite huge number of posts advertised and weightage given, the petitioners could not find their position in the merit list. It is not the case of the petitioners that they changed their position acting upon any promise given to them by the State respondents. In any view of the matter, a promise made by the State, contrary to law, cannot be enforced by way of right. The State cannot deviate from its own Rules having statutory force laying down a procedure for appointment on regular basis.

21. Be that as it may, it appears that there are posts of Dentists vacant in the State of Bihar even after appointment of Dentists on regular basis. The State Government has yet not formulated any policy in terms of its own decision as communicated through letter dated 31.03.2015 (Annexure 8) addressed by the Principal Secretary, Health Department, Government of Bihar addressed to the representatives of the association. Further, the resolution dated 17.09.2018 of the General Administration Department, Government of Bihar contemplates continuance of contractual employees, who may not



be appointed on regular basis after due process of selection, on contractual basis till regular appointments are made.

22. Mr. P.K. Shahi, learned Senior counsel has submitted that more posts of Dentists than what has been disclosed by learned GA 8 on the basis of instructions received from the Health Department, Government of Bihar are vacant, as it seems that the Health Department has not taken into account sanction of subsequent posts of Dentists while giving the instructions. He has also informed this Court that some of the Dentists have been allowed to continue to work on contractual basis.

23. In any case, it is an admitted factual position, even on the basis of information given to this Court by learned GA-8, there are 46 posts of Dentists vacant in the State of Bihar out of 571 posts. This Court exercising power of judicial review may not direct the respondent State of Bihar to engage persons including the petitioners on contractual basis. However, the Court is of the view that if the posts of Dentists are vacant and the Dentists including these petitioners have been working for long, on contractual basis, the State Government should, in public interest, consider engagement of the petitioners on contractual basis against the posts which are vacant with the clear stipulation that their contractual engagement shall terminate with appointment on



regular basis. Nevertheless, it will be open for the State of Bihar to frame a policy in terms of the communication dated 31.03.2015 (Annexure 8) but in accordance with law and statutory prescription.

24. Mr. Ajay Behari Sinha, learned GA 8 has submitted that in case the petitioners are allowed to continue on contractual basis by the State Government of Bihar in the light of observations made by this Court in the present order, they must furnish an undertaking that they shall not claim any further extension, after appointments are made on regular basis in accordance with the statutory provisions.

25. In the Court's opinion, no such undertaking is required. A contractual engagement ends with the expiry of the term of contract. Further, such contractual engagements automatically come to an end once regular appointments are made on substantive basis after following due procedure as prescribed under the Rules.

26. With the aforesaid observations, the Court directs the Additional Chief Secretary, Health Department, Government of Bihar to take a final decision on the question of engagement of the petitioners and other similarly situated persons on contractual basis by allowing them to continue against posts of Dentists, which are



vacant, after completion of the process of selection. Such decision must be taken within one month from the date of receipt/production of a copy of this order.

27. These applications stand disposed of accordingly.

(Chakradhari Sharan Singh, J)

AKASH/-

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