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**(2011) 07 PAT CK 0226**

**Patna High Court**

**Case No:** CWJC No. 19910 of 2010

Arjun Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 11, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 311

**Citation:** (2013) 138 FLR 73 : (2012) 4 PLJR 16

**Hon'ble Judges:** Ramesh Kr. Datta, J

**Bench:** Single Bench

**Advocate:** Bindhyachal Singh, Satya Prakash, for the Appellant; Satish Kumar for the State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Ramesh Kr. Datta, J.

Heard learned counsel for the petitioner and learned counsel for the State. The petitioner seeks quashing of Memo No. 706 dated 1.10.2010 issued by respondent No. 6, Additional Chief Medical Officer, Chapra, by which the petitioner has been restrained from discharging the duty and making his signature on the attendance register stating that his appointment appears to be suspicious, as there is no reference of his appointment order/letter in his service book. Further prayer of the petitioner is for quashing the order as contained in Memo No. 745 dated 11.10.2010, by which the respondent No. 6 has directed the petitioner to deposit the entire amount of Rs. 14,67,166/- received as excess amount of salary on account of his forged appointment; otherwise F.I.R. may be lodged against him and further to allow the petitioner to function on the post on which he has been discharging his duty since 29.12.1971.

2. The petitioner claims to have been appointed to the vacant post of Clerk-cum-Storekeeper at Manjhi in the District of Saran by the Civil Surgeon, Chapra under due selection process, as an advertisement for as many as 24 posts of Lower Division Clerks was made in Hindi daily newspaper "Aryavarta". It is stated that after the selection process, 16 persons were found eligible and the petitioner was appointed and joined on 29.12.1971 on the basis of the appointment letter issued by the Civil Surgeon, Saran before the Rural Family Planning Centre, Manjhi. It is stated that since then the petitioner has been regularly discharging his duty and his name finds place in the Acquittance Roll of 1971 for the first three days of his service i.e., from 29.12.1971 to 31.12.1971. The petitioner was granted salary and also received his due increments and promotions from time to time and at no stage any issue was raised regarding illegal appointment by any one. It is further stated that the service book of the petitioner was also verified and pay scale was authenticated by the District Accounts Officer on 25.5.1988.

3. The A.C.M.O., Chapra issued letter dated 8.7.2010 asking the petitioner to submit the original appointment letter within two days. The petitioner submitted his representation on 12.7.2010 requesting the respondent No. 6 to get the duplicate procured from the office, as the same was in three copies, out of which one copy was forwarded to the Rural Family Planning Officer, Manjhi and one copy was preserved in the office of the District Family Planning Officer, Chapra, which is now the office of the A.C.M.O., as the original appointment letter has already been submitted by him in the office of the Rural Family Planning Office, Manjhi at the time of his initial joining. In the meantime the payment of salary to the petitioner was stopped by Memo No. 706 dated 1.10.2010 and the petitioner was restrained from discharging his duty and making his attendance in the Attendance Register stating that his appointment appears to be fake/suspicious. Subsequently, by the impugned letter dated 11.10.2010, the petitioner was directed to deposit the entire amount of salary of Rs. 14,67,166/- in the Government Treasury, failing which appropriate action would be taken against him and an F.I.R. would be lodged.

4. Learned counsel for the petitioner submits that the entire action has been taken by the respondents in a most arbitrary and unreasonable manner without initiating any proceeding and without complying with the principles of natural justice. It is submitted that the petitioner, being a permanent employee having functioned for nearly 39 years, merely on the ground that he is unable to produce his appointment letter after nearly four decades of his appointment during which period the validity of his appointment has never been challenged or even looked into as suspicious/fake by any one, cannot be penalized in the manner the authorities have done without initiating a proper proceeding as required under the provisions of Article 311 of the Constitution of India. It is, however, pointed out by learned counsel for the petitioner that during the pendency of the writ petition by order dated 28.3.2011 of the Civil Surgeon-cum-Chief Medical Officer, Saran, the petitioner was directed to join on the earlier post immediately. Accordingly, the petitioner has

submitted his joining on 28.3.2010 and is continuously working on the post but no salary is being paid to him either since then or for the period when he had been illegally restrained from making attendance.

5. Learned counsel for the State, on the other hand, on the basis of the statements made in the counter affidavit subjects that the action has been taken against the petitioner on the basis of an audit report submitted by the Senior Accounts Officer, A.G., Bihar during the period from 5.2.2010 to 6.2.2010 and 20.2.2010 which indicates that the date of joining of the petitioner shown in his service book is 29.12.1971, but the description of the order of the appointing officer and letter number and date of appointment was not mentioned and thus his appointment was found suspected/forged and it was suggested by the Audit Team that an amount of Rs. 14,67,166/-, which has been spent on pay and allowances till 31.12.2009 with respect to the petitioner should be enquired into and proper action should be taken in this regard. It is the stand in the counter affidavit that on the basis of the said audit report, the action was taken against the petitioner when he failed to produce the appointment letter when demanded and further the petitioner was restrained from discharging his duty.

6. On a consideration of the aforesaid facts and circumstances, this Court is of the view that the respondent authorities have acted in a most unreasonable manner in the present case. If any suspicious circumstance was found on the basis of the audit report, then the respondent authorities ought to have made an enquiry and should have initiated a proper proceeding before terminating his service, specially considering the fact that he was appointed 39 years back on 29.12.1971 and is continuously discharging his duty without any one raising any objection or suspicion against the said appointment. It is only in a duly constituted enquiry that the issue of the appointment of the petitioner could have been considered and a proper order passed by the respondent authorities after complying with the principles of natural justice. Any such precipitate action, as has been taken in the case of the petitioner, is arbitrary and unreasonable and there was no occasion for the authorities to have so acted in the matter without complying with the constitutional provisions and statutory rules in the matter.

7. In the above circumstances, the memo dated 1.10.2010 and 11.10.2010 cannot be allowed to stand and they are, accordingly, quashed. Needless to say that since the petitioner has been unreasonably kept out of work he would be entitled to salary for the entire period during which he has been so kept out of work. The writ application is, accordingly, allowed with the aforesaid directions. However, it would be open to the respondent authorities to take appropriate steps in accordance with law against the petitioner.