
(2007) 07 PAT CK 0115
In the Patna High Court

Dr. Rita Narain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Citation : (2007) 115 FLR 410 : (2007) 3 PLJR 482

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shailesh Kumar Sinha, J.—A supplementary affidavit has been filed on behalf of the petitioner.

Heard the learned Counsel for the petitioner and the State.

2. The case of the petitioner is, in a nutshell, to the effect that the petitioner joined for her eventual posting before the Directorate of Health Services, Government of Bihar, Patna on 4th of March, 2003. No posting order was given till 10th of June, 2003. However, vide Notification No. 1217(2)/Health dated 11th of June, 2003, as contained in Annexure 5, the petitioner was posted at Primary Health Centre, Bodh Gaya, pursuant to which she joined the said post on 30th of June, 2003.

3. It is submitted on behalf of the petitioner that within seven days of receipt of the posting order dated 11th of June, 2003, as contained in Annexure 5, she joined the place of her posting.

4. The grievance of the petitioner is against letter No. 705(2)/Health dated 7th of June, 2005, as contained in Annexure 1, whereby and whereunder she was communicated that the period between 4.3.2003 to 29.6.2003 i.e., the period awaiting for posting is regularised as paid leave and not as a period spent on duty entitling the salary for the said period on the ground that the petitioner did not mark her attendance.

5. It is submitted that the petitioner was all along present during the aforesaid period. It is further submitted that on perusal of her representation dated 9.10.2004, as contained in Annexure 11, it appears that the petitioner made endeavour to mark her attendance, but she could not succeed. The petitioner as such submits that there is no fault on her part.

6. Learned Counsel for the petitioner has brought to my notice an order of this Court dated 19.3.2004 (Annexure 13) passed in C.W.J.C. No. 11184 of 2003 Dr. Prakash Chandra Chaudhary v. The State of Bihar and Ors., which was also of the similar nature.

7. Mr. Yogendra Prasad Sinha, learned Additional Advocate General V submits that since the petitioner was not present as she did not mark her attendance in the attendance register, she was not entitled for her salary for that period.

8. This matter was heard on previous occasion as well and this Court asked the learned Counsel for the State to produce the relevant documents requiring marking of attendance. Neither the document nor the alleged attendance register of the material period over which the attendance was required to be marked, could be produced.

9. Having considered the aforementioned submissions of the parties and the material available on the record, it is not in dispute that the petitioner joined the Directorate on 4th of March, 2003 and she remained awaiting for posting till the posting order dated 11th of June, 2003, as contained in Annexure 5, was issued. Therefore, for not issuance of the eventual posting order immediately on her joining, the petitioner cannot be faulted. As regards signing the register in order to show her physical presence, it would appear that nothing was brought on the record to counter the assertion of the petitioner that she remained all along present during the aforesaid period and also made her endeavour to mark her attendance, notwithstanding the fact that no material was brought on the record, which requires that the medical officer joining the Directorate is required to mark his/her attendance register everyday in order to show, his/her presence. In this view of the matter, this Court is of the opinion that the petitioner would be entitled to her salary and allowances for the period 4.3.2003 to 29.6.2003.

10. In the facts and circumstances aforementioned, the order, as contained in letter No. 705(2)/Health dated 7th of June, 2005 (Annexure 1) is quashed. The order, contained in Memo No. 1330(2) Health, Patna dated 6th of August, 2004, as contained in Annexure 2 to the writ application, to the effect that the period between 25.9.2002 to 29.6.2003 is regularised as paid leave is also quashed to the extent for the period 4.3.2003 to 29.6.2003. The respondents are hereby directed to make the payment of due salary and allowances of the petitioner for the period 4.3.2003 to 29.6.2003 within a period of four months from the date of receipt/production of the certified copy of this order.

The writ application is, accordingly, allowed, as indicated above. No costs.