

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.528 of 2011

IN

Civil Writ Jurisdiction Case No. 16095 of 2009

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1. The State Of Bihar Through The Principal Secretary Deptt. Of Health, Government Of Bihar, Patna
 2. The Director-In-Chief Health Services, Government Of Bihar, Patna
 3. The Civil Surgeon-Cum-Chief Medical Officer, Darbhanga
 4. The Incharge Medical Officer Primary Health Centre, Baheri, Darbhanga

.... Appellant/s

Versus

1. Shantu Kumari W/O Late Satish Prasad Resident Of Village - Dasturpur, P.S. Chandi, District Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. D.K. Sinha (A.A.G-2)
Mr. Biresh Kumar Sinha (AC to AAG-2)
For the Respondent/s : Mr. Banwari Sharma, Advocate
Mr. Shiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-11-2015

The State being aggrieved by the Judgment and order dated 18.12.2009 passed in C.W.J.C. No. 16095 of 2009 along with analogous cases, filed this intra-Court appeal. The issue is simple. The writ petitioner was ANM (Auxiliary Nurse Midwifery), and after almost 15 years of satisfactory service, she has been terminated without any proceedings or hearing in the matter, simply on the ground that her appointment was based on a forged certificate . When such an order was issued, at the first instance she filed a writ petition



in this Court to set aside the termination order. The State then preferred intra court appeal, in which this Court directed constitution of a Committee to examine such matters. Once again, this Committee without notice to the writ petitioner, simply held that the Nurses' Registration Certificate produced by the writ petitioner was fake and fabricated and, accordingly, the service of the writ petitioner was, once again, terminated. This is what brought the writ petitioner to this Court once again. In the above mentioned writ petition, the learned Single Judge merely on the ground that the enquiry whatever may be, conducted by the Five Men Committee did not take or involve the writ petitioner and, therefore, the order of the Five Men Committee could not be accepted as valid. The order was, accordingly, set aside once again. The State is in intra-Court appeal from this Court.

2. Heard the parties. With their consent this appeal has been heard for its final disposal at this stage itself.

3.Learned A.A.G.-2 submits that where the document on the basis of which appointment has been sought is fake or fabricated, a person does not get any right and as such he need not be heard in the matter.

4.Having considered the matter, in our view, we cannot agree with such a proposition, for in the case of Basudeo Tiwary Vs.Sido Kanhu University and others,since reported in (1998) 8

Supreme Court Cases 194, and particularly paragraph 12 thereof, the Apex Court has clearly held that whether a document is fake or fabricated itself is a matter of inquiry, in which the delinquent has to be involved and heard, for there can be no ex parte assessment and finding in this regard. That being so, even to arrive at a finding, the writ petitioner was required to be heard. It is equally well- settled that an order, which prejudicially affects a person in breach of principles of natural justice, such an order would be a nullity. Thus, on fact and on the legal principle, we find no infirmity in the order of the learned Single Judge in allowing the writ petition.

5.We, accordingly, dismiss this appeal.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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