

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8770 of 2016

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Vidya Devi wife of Sri Sudarshan Singh Yadav, Resident of Village Mohania, P.S. Mohania, District Kaimur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Government of Bihar, Patna.
2. Director-in-chief (Nursing), Health Services, Bihar, Patna.
3. Regional Additional Director, Health Services, Patna Division, Patna.
4. Civil Surgeon cum Chief Medical Officer, Kaimur, at Mohania.
5. Deputy Superintendent of Subdivisional Hospital, Mohnia, Kaimur.
6. Asha Kumari Wife of Sri Nand Kishore Singh, resident of Mohania near S.D.M. Court, P.S. Mohania, District Kaimur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Banwari Sharma, Advocate
For the State	:	Mr. Wasi Ahmad Khan, AC to SC25
For Res. No.6	:	Mr. Jitendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 16-12-2016

Writ application has been filed for quashing the order dated 10.12.2015, issued under the signature of the Director-in-Chief (Nursing), Department of Health, Government of Bihar. The said letter is Annexure-8 to the writ application.

2. The battle, which the petitioner is fighting, had an origin as to the place of posting where the petitioner would like to work and continue as an A.N.M. She was posted at the Primary Health Centre, Kudra. While working at Kudra, she made an application before Civil Surgeon-cum-Chief Medical Officer, Kaimur that keeping in mind her physical disability and seniority, she may be



posted in the Sub-divisional Hospital, Mohania. The Civil Surgeon-cum-Chief Medical Officer vide order dated 27.07.2015 transferred the petitioner to M.C.H. Unit of Sub-divisional Hospital, Mohania. This order is Annexure-2 to the writ application. As per the order of the Civil Surgeon, a consequential order was issued on 04.08.2015 by the Deputy Superintendent of Sub-divisional Hospital, Mohania by virtue of which petitioner came to be posted in M.C.H. Unit of the Sub-divisional Hospital. Respondent no.6, who was posted in M.C.H. Unit, was moved to Additional Primary Health Centre, Kulharia. Petitioner claims that respondent no.6 was much junior to the petitioner and she was posted at Mohania for more than five years. The order of the Deputy Superintendent of Sub-divisional Hospital, Mohania, contained in Annexure-3, dated 04.08.2015 was challenged by respondent no.6 by filing CWJC No.13219 of 2015. The writ was disposed of with a direction to consider her objection by the appropriate authorities.

3. Based on the directive issued in the writ application and keeping in mind the circular dated 31.05.2013, which is Annexure-4 to the writ application, the Deputy Superintendent of the Sub-divisional Hospital, Mohania sought clarification from the Civil Surgeon-cum-Chief Medical Officer, Kaimur. The Civil Surgeon-cum-Chief Medical Officer informed that the circular contained in



Annexure-4 relates to clerical cadre and, therefore, it is not applicable in the case of Asha Kumari, respondent no.6, therefore, there was no question of reconsideration of her application against her transfer. This fact was communicated to the private respondent no.6 and she was asked to comply with the earlier order of transfer.

4. Suddenly after more than two months, an order dated 10.12.2015 has been issued under the signature of Director-in-Chief (Nursing), Health Services which cancelled the posting of the petitioner at M.C.H. Unit in the Sub-divisional Hospital, Mohania and also cancelled the order of transfer of respondent no.6. This order, contained in Annexure-8, is now being assailed in the present writ application. The petitioner's contention is that the order contained in Annexure-8 was issued without giving any opportunity of hearing. The petitioner also filed an application before the Principal Secretary, Health on 21.12.2015 making a grievance against such a decision. Even the Civil Surgeon, Kaimur has written a letter to the Director-in-Chief (Nursing). However, without any guidelines or details, the order dated 21.01.2016 has been issued under the signature of the Civil Surgeon, Kaimur, which allowed respondent no.6 to work at M.C.H. Unit in the Sub-divisional Hospital, Mohania.

5. Then again a letter dated 22.02.2016 was issued by the Civil Surgeon staying the operation of the order dated 21.01.2016,



which allowed respondent no.6 to perform her duty by asking the petitioner to continue in her capacity.

6. While the petitioner was working in terms of the order dated 22.02.2016 (Annexure-11), an order dated 22.04.2016 has now been issued by the Civil Surgeon by virtue of which the order dated 22.02.2016, i.e., Annexure-11 has now been cancelled, which is Annexure-12 and so the position of the petitioner, a handicapped person, has been made precarious.

7. A supplementary counter affidavit has been filed on behalf of respondent no.2, i.e., the Director-in-Chief (Nursing). His stand is that a Deputy Superintendent of the Sub-divisional Hospital, Mohania had no jurisdiction to effect any transfer and, therefore, intervention was required to be made by the superior authorities. When the superior authorities found such notification to be without competence, the Civil Surgeon-cum-Chief Medical Officer issued a notification dated 22.04.2016 putting the petitioner back to her earlier place of posting. One of the ground given by the petitioner is that she is physical handicapped to the extent of 45% also is not correct and no leeway can be given to such disability certificate because such certificate has been obtained from a doctor and not from a Medical Board. Even respondent no.6 is physically handicapped to the extent of 50% disability and her certificate was issued by a Medical Board.



There has been an effort on the part of the petitioner to some how get herself accommodated at the place of her liking by making some kind of story of discrimination. It has been urged by the counsel for the State that the subordinate authorities at the local level have tried to help the petitioner for reasons best known to them.

8. Since the initial order of transfer and accommodation of the petitioner was not by the competent authority as has been pointed out by the Director-in-Chief (Nursing) and it is the illegality of such decision, which has been corrected by the Director-in-Chief, the Court will not interfere with the impugned order contained in Annexure-8.

9. Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	05.10.2016
Uploading Date	16.12.2016
Transmission Date	NA

