

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1283 of 2015
In
Civil Writ Jurisdiction Case No. 3609 of 2015

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1. Kumari Simple Sinha D/o Sri Satish Prasad Resident of Village Chandu Bigha, P.O. Ashadi, P.S.- Hilsa, District- Nalanda

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna
2. The Director-in-chief, Health Services, Govt. of Bihar, Patna.
3. The Bihar Staff Selection Commission, through its Chairman, Patna
4. The Chairman, Bihar Staff Selection Commission, Patna
5. The Secretary, Bihar Staff Selection Commission, Patna
6. The Civil Surgeon-cum-Chief Medical Officer, Patna

.... Respondent/s

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Appearance :

For the Appellant/s

: Mr. Amrendra Narayan

Mr. Sanjay Kumar

For the Respondent Nos. 1, 2 and 6

: Mr. Gautam Ghosh, A.A.G. VIII

Mr. Vikash Jha, A.C. to A.A.G. VIII

For the Respondent Nos. 3,4 and 5

: Mr. Kamala Kant Upadhaya

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

7 04-03-2016

Heard Mr. Amrendra Narayan, learned Counsel for the appellant, and Mr. Gautam Ghosh, learned Additional Advocate General No. 8, appearing for the Respondent Nos. 1, 2 and 6. Heard also Mr. Kamala Kant Upadhaya, learned Counsel, for the respondent Nos. 3, 4 and 5.

2. The present intra-Court appeal has been preferred against the judgment and order, dated 01.05.2015, passed by a learned single Judge of this Court C.W.J.C. No. 3609 of 2015, which was disposed of along with C.W.J.C. No.

3634 of 2015 and other analogous cases, whereby and whereunder the appellant's writ application was dismissed, according to the appellant, without appreciation of the issues involved therein.

3. The brief facts, which led to the filing of the aforementioned writ application, may, in brief, be set out as under:-

- i. By the Advertisement No. 03030114, as many as 3930 vacancies for the post of Auxillary Nurses Midwife (in short, 'ANM'), were advertised by the Bihar Staff Selection Commission, Patna. The appellant/writ petitioner also applied online.
- ii. In the said advertisement for selection and appointment to the post of ANM, it was mentioned that the appointment of ANM would be made on the basis of percentage of marks as well as points secured in the interview. The details of the criteria were given in the advertisement, which disclosed the procedure for appointment to the post of ANM and that the selection would be made as per the procedure prescribed in the ANM Rules. The number of vacancies was, later on, enhanced to 4344, by virtue of a corrigendum published by the Commission, in

daily Hindi newspaper 'Dainik Jagran', on 11.02.2015.

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- iii. The Bihar Staff Service Commission issued call letters, amongst others, to the appellant for appearing in the interview to be held on 09.02.2015 and, on that date, she was required to bring her caste certificate as well as certificate of experience. At the time of interview, the appellant claims to have had five years of experience along with a brilliant academic career; but the appellant was given 42.33 marks in academic and experience and she was given 8 marks in the interview. As a result whereof, though she was declared qualified, she was placed at the rank 8536.
- iv. The appellant contended that she ought to have got a minimum of 63 marks, excluding the marks given to her in the interview, since Rules 7(2) of the ANM Rules, which prescribes the calculation of marks to be awarded in order to prepare the merit list, was as follows:-
- a. 50 per cent marks obtained in ANM
 - b. 10 per cent marks for higher degree
 - c. 25 for work experience (05 marks for each

year, maximum 25 marks)

d. 15 for interview

4. According to the appellant, the appellant had got 762 marks out of a total of 900 marks in academics, which would carry weightage marks of 42, i.e., at the ANM examination. Further, the applicant had five years experience, which ought to have fetch weightage marks of 25 and the same would add up to 67 out of 85. Since the appellant had done well in the interview, she had a minimum expectation of having 10 marks, but, unfortunately, her name could not be included in the select list of candidates, the grievance of the appellant is that persons, securing 62 marks in the Backward Class Category, has been placed in the select list, whereas the appellant failed to make it to the same.

5. Having failed to make it to the select list, the appellant moved this Court apprehending that her work experience had not been included and weightage marks had not been included while considering her candidature. It was contended by her that if her experience was taken into consideration, it would fetch her 25 marks upon, whereupon she would be definitely entitled to be included amongst the candidates in the select list. It was further contended that she



would have received 67 marks, in all, in academic career and experience. If the marks of her experience are considered, even excluding the interview marks, she would have made it in the select list as candidates, securing 63 marks, had been included in the said list. It was alleged by the appellant/writ petitioner that the Commission had prepared the result in violation of the terms of the advertisement as well as without following the ANM Rules and the prescribed procedure contained therein for direct selection to the post of ANM. It was prayed that the merit list, being improperly prepared and in violation of Rule 7(2) of the ANM Rules, was flawed and fit to be quashed.

6. The respondent Nos. 3 to 5 (Bihar Staff Selection Commission) contested the matter and submitted that the Bihar Staff Selection Commission had not framed any Rule of its own; rather, it strictly followed the terms of the advertisement and adhered to the terms and conditions of the requisitions sent by the concerned Department. It was submitted by the respondents that the Commission, after receiving the requisition from the Department of Health, initiated the process of selection and minimum qualifying marks were fixed. The selection had two parts, i.e., 85 marks were fixed for academics, higher qualification, and experience in the one part, and 15 marks for the interview, in the other. The candidates had to secure a

minimum 25 marks at each of the stages separately. The minimum qualifying marks was 40 percent for the general candidates, 36.5 for the backward classes, 34 percent for MBC Classes and 32 for S.C./S.T. and females. In this way, females candidates had to secure 5 marks out of 15 marks to qualify at the interview. It was contended by the Staff Selection Commission that after completion of the entire process of selection, a merit-list of eligible candidates, who had minimum qualifying marks and had secured minimum pass marks, above the qualifying cut-off marks, in both academics and interview, was prepared. It was further stated that in pursuance of the direction of this Court passed on 26.03.2015, the marks, obtained by the candidates, who had appeared in the examination of ANM, 2014, were uploaded on the *website* of the Commission. It was clarified that the Staff Selection Commission had not framed any rules of its own for conducting the examination of ANM; rather, it had followed the Bihar Lady Health Worker (Auxiliary Nurse Midwife) Cadre Rules, 2013. It has also strictly followed the procedure prescribed by the Department of Personnel and Administrative Reforms, contained in Memo No. 2374 dated 16.07.2007. It was, thus, contended that the appellant would have no case as she had not succeeded in securing the minimum qualifying marks and, thus, her name

did not find place in the merit list of existing vacancies.

7. The Staff Selection Commission, vide supplementary affidavit, has also brought on record of the present memo of appeal, the documents filed by the appellant/writ petitioner. By the said documents, the respondents have sought to clarify the true reason why the appellant/writ petitioner could not succeed in making it to the merit-list. It has been stated that the sole, issue raised by the appellant, is that in the selection process to the post of ANM, is that the appellant has not been given weightage of 25 per cent marks despite her having five years working experience in a Primary Health Centre on contractual basis. It was contended that at the time of her personal interview, though she produced her experience certificate, the interview board declared the same as invalid for the reason that there was no date or issue number in the same and such a document was, but a doubtful piece of evidence in her favour. Accordingly, the marks for experience were not added and, consequently, she failed to make it to the merit list.

8. We have heard learned Counsel for the parties and perused the materials on record. The contention of the appellant cannot be sustained as it is evident, on a mere perusal of the documents, annexed by Staff Selection Commission, that even, at the time of her interview, the certificate, on the basis of

which she claimed a weightage of 25 marks, which was brought in for consideration of her experience, was, in fact, held to be doubtful. The Checklist (Annexure R/1) itself indicates that the experience certificate was doubtful, for, it was without date/issue number. Consequently, the same could not form part of the consideration in the case of the appellant.

9. Having perused the aforementioned checklist and the certificate issued by the Primary Health Centre, Mashauri, Patna, we are satisfied that the certificate is such that the same could not inspire confidence in the minds of the respondents and, accordingly, the appellant could not secure 25 marks, which she claims to be to her credit.

10. For the foregoing reasons and on consideration of the facts and the attending circumstances, including the certificate presented before this Court, we find no infirmity in the order and judgment, under appeal.

11. In the result, this appeal is dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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