

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1374 of 2015

IN

Civil Writ Jurisdiction Case No. 3275 of 2015

- =====
1. Kumari Bibha Sinha W/O Ajay Kumar Sinha, D/o Krishna Mohan Prasad, resident of village/Mohalla Chitragupta Nagar + P.O. + P.S. + District- Khagaria.
 2. Madhu Kumari W/O Suman Kumar, D/O Ramakant Yadav, resident of village-Nanhakumandal Tola ward no. 9 P.O. Durgapur, P.S. Mufassil, District- Khagaria

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary Health department Govt. of Bihar Patna.
2. The Director in chief Health Services Govt. of Bihar Patna.
3. The Director, Health & Family Welfare, Bihar, Patna.
4. The civil Surgeon cum chief medical officer Khagaria.
5. The Secretary Bihar Staff Selection Commission vetnory College Patna-14.

.... Respondent/s

with

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Letters Patent Appeal No. 1385 of 2015

IN

Civil Writ Jurisdiction Case No. 3634 of 2015

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1. Vandana Kumari W/o Sri Anuj Kumar resident of village , P.O. & P.S. - Bajpatti, District - Sitamarhi.
 2. Gaytri Sinha W/o Sri Umashankar Singh resident of village & P.O. - Bhasepur Ratwara, P.S. - Bajpatti, District - Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Special Secretary, Health Department, Government of Bihar, Patna.
3. The Special Director, Health Department, Government of Bihar, Patna.
4. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
5. The Secretary, Department of Finance, Government of Bihar, Patna.
6. The Director-in-Chief, Directorate Health Services, Government of Bihar, Patna.
7. The Secretary, Health Department, Government of Bihar, Patna.
8. The Bihar Staff Selection Commission through its Secretary.
9. The Chairman, Bihar Staff Selection Commission.
10. Veena Kumari W/o Manoj Kumar resident of village - Malipur Pakari, P.S. - Sitamarhi Town, District - Sitamarhi.
11. Mina Kumari D/o Ravindra Singh resident of village & P.O. - Ratwara, P.S. - Bajpatti, District - Sitamarhi.
12. Ranjana Kumari W/o Ranjay Kumar Pandey resident of village & P.O. - Malipur Pakari, P.S. - Bajpatti, District - Sitamarhi.
13. Asha Kumari W/o Sunil Kumar Sharma resident of village Shivaipatti, P.S.

Bajpatti, District - Sitamarhi.

14. Leela Kumari W/o Shri Sudhir Mishra resident of village & P.O. Janipur, P.S. - Nanpur, District - Sitamarhi.

.... Respondent/s

with

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Letters Patent Appeal No. 1197 of 2015
IN
Civil Writ Jurisdiction Case No. 4830 of 2015

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1. Nilu Kumari daughter of Ram Prasad Singh and wife of Sri Amod Kumar Singh resident of village and P.O. Phusadh, P.S. Paroo , District - Muzaffarpur.
2. Kusum Lata, daughter of Kapildeo Thakur and wife of Santosh Sharma Resident of Mohalla - Pankha Toli, Maharaja Colony, P.O. Ramna, P.S. Mithanpura, District- Muzaffarpur.
3. Sangeeta Kumari daughter of Jugal Kishore Thakur and wife of Akhilesh Thakur resident of Mohalla- Krishna Nagar, Khabra, P.O. Khabra, P.S. Muzaffarpur Sadar, District- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department , Government of Bihar, Patna.
3. The Director -in-Chief , Health Services, Bihar, Patna
4. The Staff Selection Commission , Bihar, Patna through the Secretary,
5. The Secretary , Staff Selection Commission , Bihar, Patna.
6. Rupam Kumari daughter of Late Ram Milan Mishra and wife of Sri Rakesh Kumar , resident of village and P.O. Kalyanpur , P.S. Paroo, District- Muzaffarpur.
7. Kumari Pammi daughter of Sri Ram Kumar Sharma and wife of Sri Arun Prakash Pandey , resident of Mohalla- Prabhat Nagar Colony , Road, No. 1 , P.O. Bhagwanpur, P.S. Muzaffarpur, Sadar, District- Muzaffarpur.
8. Kamini Kumari daughter of Late Ram Chhabila Thakur and wife of Ravindra Prakash Pandey , resident of Mohalla - Chanakya Vihar , Gobarsahi, P.O. Khabra , P.S. Muzaffarpur Sadar , District- Muzaffarpur.
9. Sunita Kumari daughter of Rajendra Dubey and wife of Navnit Mishra Resident of village- Sahwajpur Durga Asthan Chowk , P.O. Bhikhanpur, P.S. Ahiyapur, District- Muzaffarpur.
10. Nilu Kumari daughter of Late Krishnadeo Narain Singh Resident of Mohalla - Anand Vihar, Sahwajpur, P.O. Bhikhanpur, P.S. Ahiyapur , District- Muzaffarpur.
11. Soni Kumari daughter of Sir Harendra Prasad Sinha and wife of Navin Kumar resident of village- Chochhan , P.O. Anirudh Belsar, P.S. Saraiya , District- Muzaffarpur.
12. Sunita Kumari daughter of Late Kishori Mahto and wife of Sri Ravindra Kumar , resident of village and P.O. Mohammadpur Badal , Via- Silout , P.S. Sakra, District- Muzaffarpur.
13. Ranjana Kumari daughter of Braj Kishore Shukla and wife of Jayant Kumar , resident of village and P.O. Phuladh, Via - Gyaspur, P.S. Paroo, District- Muzaffarpur.

.... Respondent/s

with

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Letters Patent Appeal No. 1559 of 2015
IN
Civil Writ Jurisdiction Case No. 4411 of 2015

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1. Kusum Kumari w/o Ajay Singh R/o Village- Barigaon, Police Station- Sasaram, District Rohtas.
2. Manju Kumari W/o Ravindra Singh R/o Mainpura, P.s Kargahar, District Rohtas.
3. Kumud Kumari W/o Updesh Singh R/o Village- Rajpur, district Rohtas.
4. Nilmani Kumari W/o- Shiv Bachhan Chaudhary R/o Darekha, P.s Nasriganj, District Rohtas.
5. Urmila Kumari w/o Sunil kumar Singh R/o Village- Dumara, P.s Kargahar, District Rohtas.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health & Family Welfare, Government of Bihar, Patna.
2. The District Magistrate-cum-Chairman, District Health Society Rohtas at Sasaram.
3. The Civil Surgeon-cum-Chief Medical officer, Rohtas at Sasaram.
4. The Chairman , Bihar staff Selection commission, Veterinary College, Patna through its Secretary.
5. The Secretary , Bihar staff Selection commission, Veterinary College, Patna
6. The Examination Controller, Bihar staff Selection commission, Veterinary College, Patna
7. Gangarati Kumari W/o Ram Ratan Singh R/o Village New Sighauli, P.s Dalmianagar, District Rohtas.
8. Reena kumari W/o Suryadayal Singh R/o Village -New Sighauli , P.s Dalmianagar, District Rohtas.

.... Respondent/s

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Appearance :

(In LPA No. 1374 of 2015)

- For the Appellant/s : Mr. Raja Surendra Mohan
 For the Respondent/s : Mr. Sanjay Pandey, GP-21
 For the Appellant/s : Mr. Binod Kumar Singh
 For the Respondent/s : Mr. K.K. Upadhyaya

(In LPA No. 1197 of 2015)

- For the Appellant/s : Mr. Vijay Kumar Singh
 For the Respondent/s : Mr. Dinbandhu Singh

(In LPA No. 1559 of 2015)

- For the Appellant/s : Mr. Kumar Kaushik
 For the Respondent/s : Mr. Avinash Kumar SC-30
- =====

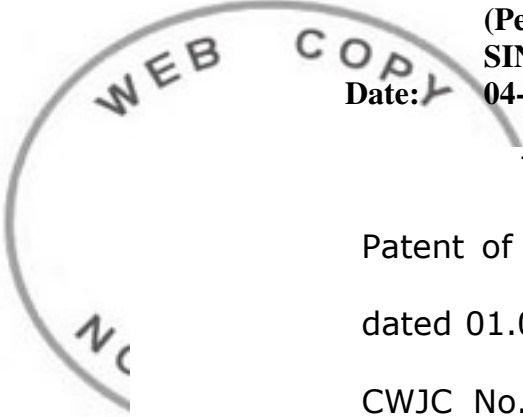
CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 04-02-2016



This batch of appeals filed under Clause 10 of the Letters Patent of this Court arises out of a common judgment and order, dated 01.05.2015, passed by a learned single Judge of this Court in CWJC No. 3275 of 2015 and other analogous applications filed under Article 226 of the Constitution of India. All the appeals, therefore, have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

2. I.A. No. 6003 of 2015 in LPA No. 1374 of 2015 and I.A. No. 7085 of 2015 in LPA No. 1559 of 2015 have been filed for condonation of delay in preferring the said appeals. In the interest of justice and considering the reasons assigned in the applications, the delays in filing the said appeals are condoned and I. A. Nos. 6003 and 1559 of 2015 are allowed.

3. All the appellants were applicants for appointment against the post of *Auxiliary Nurses Midwife* (ANM) advertised by the *Bihar Staff Selection Commission* (hereinafter referred to as the '*Commission*') through Advertisement No.03030114 issued on 12.12.2014. Being aggrieved by their not having been appointed to the post, they approached this Court by filing applications, under Article 226 of the Constitution of India, seeking a direction for their



appointment. Their claims, in the writ proceedings, were based on various grounds including the ground of irregularities committed by the *Commission* in completing the process of selection. There is also a grievance that the *Commission* adopted unfair practice in awarding marks for interview, which had the consequence of awarding higher marks to less meritorious candidates and less marks to the deserving candidates. It was also their grievance that the *Commission* arbitrarily fixed minimum cut-off marks for interview, because of which many meritorious candidates have been denied appointment since the marks, scored by them in the interview, were slightly less than in minimum cut-off marks. They also took a plea that in the absence of any cut-off marks having been prescribed, in the rules, to be scored in interview, governing appointment of *A.N.Ms*, the *Commission* did not have any authority to prescribe minimum cut-off marks for the interview.

4. The learned single Judge, by the order under appeal, dismissed the writ applications recording a finding that no unfairness or lack of fair play, in the process of selection of *ANMs* by the Staff Selection Commission, could be established before this Court. While dismissing the writ applications, the learned single Judge observed that if any candidates had any doubt left with regard to marks etc, awarded to him/her, in the said process of selection, he/she shall have the freedom to approach the Secretary of the *Commission* to settle such doubt.

5. From the materials on record, we find that a total of 3930 posts of A.N.Ms. were advertised. The appointment, in the cadre of A.N.Ms, under the Health Department, is governed by "Bihar Lady Health Worker Auxiliary Nurse Mid wife (ANM) Cadre Rules, 2013 (hereinafter referred to as the Rules), which have been framed in exercise of power conferred by the proviso to Article 309 of the Constitution of India. Rule 5 of the said Rules provides that the appointment shall be made by the direct recruitment to the basic categories posts on the basis of recommendation of the Commission. Rule 7 of the said Rules provides for the procedure of recruitment which reads thus:-

"7. Procedure of Recruitment.- (1) The appointing authority, after calculating vacancy on the basis of position on 1st April of the year and getting roaster cleared, shall send reservation category wise requisition to the Commission latest by 30th April.

(2) In view of the requisition the Commission shall invite applications by advertising vacancies and shall prepare merit list on the following basis:-

(a) For marks obtained in ANM course examination	-50 marks
(b) For higher degree	-10 marks
(c) For experience in Government hospitals of Bihar	
State (5 marks per year, maximum 25 marks)	-25 marks
(d) For interview	<u>-15 marks</u>
Total	<u>100 marks</u>

Explanation:- The marks to be given to a

candidate for ANM course examination shall be determined by multiplying the percentage of total marks obtained in the aforesaid examination by multiple of 0.5. For example, if a candidate has obtained 50% marks, then he will be given $50\% \times 0.5 = 25$ marks.

(3) The Commission shall send prepared merit list on the basis of aforesaid sub-rule (2), and reservation category wise recommendations in conformity with requisitioned vacancy to the Appointing Authority.

(4) Procedure for interview shall be determined by the Commission."

6. It transpires that the State Government of Bihar, through its Personnel and Administrative Reforms Department's Resolution, dated 16.07.2007, has prescribed, in respect of competitive examination, minimum qualifying marks for written examination as well as interview. The said resolution, dated 16.07.2007, is on record as Annexure to the counter affidavit filed on behalf of the *Commission* in the writ proceedings. It is evident from the said resolution that the minimum prescribed marks applicable to all competitive examinations for selection and appointment for the posts under the State Government and different minimum qualifying percentage of marks has been laid down for different categories of candidates, viz, General category, Backward category, Backward Category Annexure-1 and Scheduled Castes and Scheduled Tribes and female as 40%, 36.5%, 34% and 32% respectively. The said resolution of the State Government has

been followed by the *Commission* in the process of selection in question.

7. In response to the said advertisement, several applications were filed. The applicants were invited for interview and adopting the procedure, prescribed under Rule 7 of the Rules read with the said resolution, dated 16.07.2007, result of successful candidates was uploaded on the *web site* of the *Commission*.

8. The appellants, aggrieved by their having not been selected, approached this Court by filing various writ applications. From the order under appeal, we find that the *Commission* recommended names of 4,298 candidates for their appointment as A.N.Ms. It also appears that in accordance with the resolution, dated 16.07.2007, following qualifying marks, in interview, was prescribed by the *Commission*:-

" Required Minimum Qualifying Marks in Interview

General	BC	MBC	SC	ST	WBC	Female
6	5.475	5.1	4.8	4.8	4.8	4.8"

9. The cut-off marks of the candidates, recommended for appointment against various categories, were fixed as follows:-

"Cut-off Marks of Recommended Candidates.

General	General Disable	BC	BC Disable	MBC	SC	ST	WBC
70.94	36.17	69.17	43.61	43.54	34.78	39.08	68.39"

10. From the order under appeal, we find that *Staff Selection Commission* had produced complete tabulation sheet of all the candidates before the learned single Judge in the writ proceedings for perusal, which indicated the *inter se* merit position of candidates on the basis of evaluation of their credentials and performance in the interview. The learned single Judge did an exercise of random checking of award of marks and determination of merit position of such candidates. The learned single Judge did not find any wrong in the evaluation of individual merits of the candidates based on which final merit list was drawn up and notified. There is an observation made by learned single Judge that none of the learned counsel could pinpoint any discrepancy in awarding marks to the individual candidates.

11. The learned single Judge, accordingly, rejected the allegations made against the *Staff Selection Commission* of unfair play or wrong doing in exercise of making selection for appointment to the post of *A.N.Ms*. Learned single Judge has recorded that such attempt of the appellants/writ petitioners making such allegation was mischievous, false or without any substance.

12. No material been brought to our notice by learned counsel for the appellants, in the present appeals, for us to have a different view than what has been taken by the learned single Judge with respect to allegations of wrong doings or unfair play by

the *Commission* completing the selection process.

13. However, a grievance has been raised on behalf of the appellants that they have not been included in the merit list only because they could not secure cut-off marks for interview, though on the basis of their performance against other attributes, they had better marks than those who have been selected.

14. No dispute has been raised that the State Government in its resolution, dated 16.07.2007, has prescribed minimum percentage of qualifying marks for interview for making selection/appointment on the basis of competitive examination. The said resolution is apparently applicable to all posts in the service of the State Government of Bihar including the post of *A.N.M.*.

15. The learned single Judge has found no flaw in the decision of the State Government as contained in the said resolution, dated 16.07.2007, nor in the decision of the *Commission* to follow the said guidelines issued by the State Government fixing minimum percentage of qualifying marks for interview. We do not find any infirmity, legal or factual, in the conclusions, arrived at by the learned single Judge.

16. The appellants have failed to make out any case of arbitrariness on the part of the Selection Commission and their consequent discrimination. This Court, in exercise of power of judicial review under Article 226 of the Constitution of India, cannot

sit in appeal over award of marks in the interview by a duly constituted Selection Committee. Admittedly, the appellants were awarded less marks than the minimum marks fixed for interview by the interview Board. No case, warranting interference with judgment and order under appeal of the learned single Judge, is made out.

17. Situated thus, we do not find any merit in these appeals, which are accordingly dismissed.

18. It is indicated that dismissal of the present appeals will not amount to diluting the observations of the learned single Judge, whereby the individual candidates have been allowed to approach the Secretary of the *Commission* to settle their doubts, if any.

(I.A.Ansari, ACJ)

ArunKumar/-

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(Chakradhari Sharan Singh, J)