

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1573 of 2016

In

Civil Writ Jurisdiction Case No.7429 of 2008

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Shiv Narayan Thakur Son of Late Ram Iqbal Thakur, resident of Village Barki Nanjor, District- Buxar.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.
2. Joint Secretary, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.
3. Deputy Secretary, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.
4. Director, Desi Chikitsa, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.
5. Under Secretary, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.
6. Screening Committee through the Secretary, Health, Medical Education and Indigenous Medicine Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Banbari Sharma
Advocate
Mr. Shiv Kumar
Advocate
For the Respondent/s : Mr. Ranjan Kumar Singh
AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 08-12-2017

Heard learned counsel for the parties.

The appeal has been preferred against the order, dated 24.11.2015. A large number of writ applications came to be clubbed together and heard together, though individual cause and claim for appointment on a permanent basis in what is known as



Dhanwantari Ayurvedic College, Ahirauli at Buxar was considered by the Learned Single Judge.

Since the Learned Single Judge did not consider the case of the present appellant worthy of any direction, for him to be appointed on a substantive basis, this appeal has been preferred.

The Court would like to take advantage of the discussions, which the Learned Single Judge has done about the status of the present appellant, while dealing with the writ application, which is C.W.J.C. No. 7429 of 2008. The relevant paragraphs, where the adjudication has been made with regard to the appellant, emerges from paragraph 281 to 286 of the impugned order, which is reproduced hereinbelow:

“281. In this case the sole petitioner Shiv Narayan Thakur has claimed absorption on the post of Library Assistant. According to the petitioner, he was appointed on 14.7.1981 by the Governing Body of the college on the post of Library Assistant. The very faint letter of appointment however will go to show that such decision was never taken by the Governing Body of the college rather it was a decision taken by the Secretary to the Governing Body.

282. This Court has also gone into the staffing pattern and has found that there is no post of Library Assistant and in fact for Library, there is only one post of Librarian. Learned counsel for the petitioner has



submitted that if there be no post for Library Assistant, the respondent ought to have not considered him for the post of Library Assistant inasmuch as there will be a world of difference between Librarian and Library Assistant. A Librarian who has to possess specialized qualification of degree or diploma in Library Science whereas a Library Assistant as today only required a clerical work.

283. The difficulty for this Court, however, would be that if there is no sanctioned post of Library Assistant, this Court would find it difficult to direct the respondent for absorbing the services of the petitioner either on a non-existing post and on a non-sanctioned post of Library Assistant or on an inferior Class IV post of Library Attendant. As a matter of fact there is also no separate sanctioned post of Library Attendant and it is only for the working strength of Class IV employees though services of Peon has to be utilized for any menial to be done in the Library.

284. Learned counsel for the petitioner in such a situation had sought to assail the decision taken by the Review Committee where the case of the petitioner was considered only against the post of Assistant Librarian. Learned counsel for the petitioner explains applying the ratio laid down by the Apex Court in the case of Mahendra Singh Gill vs. Union of India & ors., reported in AIR 1978 SC 851, the respondent should not be allowed to take any further defence beyond



what was considered by the Review Committee.

285. This Court would find it difficult to make the law of Mahendra Singh Gill's case (supra) applicable to the present case. Here the question is that whether a person can be absorbed under section 6 of the Taking Over Act and for that there has to be firstly availability of a sanctioned post. The Governing body may appoint any number of persons without following or adhering the staffing pattern but then the statute of taking over gives power to the Government to take over services only of such employees who are within the prescribed sanctioned strength. The Government in its case has already considered with regard to requirement of staffs in a Library of the Ayurvedic College and had sanctioned only one post namely the post of Librarian and the petitioner does not fulfill the qualification of the post of Librarian.

286. In that view of the matter, this Court would find it difficult to direct for absorption of services of the petitioner Shiv Narain Thakur. This writ application is, accordingly, dismissed."

The utility or the reason for retention of service of an employee appointed by the Private Managing Committee, once the college was taken over, has to be decided on the basis of the staffing pattern, which the State Government has worked out as to the number of people, who are needed and the post which are



available against which they are required to be accommodated. No person can expect to be appointed or retained, when there is no sanctioned post. No salary can accrue from a public ex-chequer on a non-sanctioned post.

From what has been discussed and stated by the Learned Single Judge, the reason for dismissal of the writ application in the very first place is obvious and we do not find any reason to interfere with the said finding and decision.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

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