

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No 3621 of 2016

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Prakshikeshit Mahila Barojgar Swasthya Karyakarta (ANM), Sitamarhi through its Member, namely, Gaytri Sinha, wife of Sri Uma Shankar Singh, Resident of Village + PO – Bhasepur, Ratwara, PS – Bajpatti, District - Sitamarhi

.... Petitioner/s

Versus

- 1 The State of Bihar through Sri R K Mahajan, the Secretary, Health Department, Bihar, Patna
- 2 Dr Azad Hind Prasad, the Director General, Health Services, Bihar, Patna
- 3 Dr Bindeshwari Sharma, the Civil Surgeon –cum- Chief Medical Officer, Sitamarhi
- 4 Sri Rajeev Raushan, the District Magistrate, Sitamarhi
- 5 Smt Munmun Mishra, the Registrar, Bihar Nurses Registration Council, Patna
- 6 Sri Sudhir Kumar, the Chairman, Bihar Staff Selection Commission, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Binod Kumar, Advocate

For the S t a t e : M/s Sachindra Kr Tiwari & Dharmendra Kr,
ACs to AAG IX

For the Commission : M/s Kamlakant Upadhyay & Chandra Bhsushan Das,
Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 20-02-2017

This case illustrates how, though feudalism had to end, it continues especially when it comes to State services. Writ petitions were filed in this Court challenging the propriety of the Government in not filling up permanent sanctioned vacant posts of Auxiliary Nurse Midwifery (for brevity, ANM) which is part of basic health service. In the writ proceedings, it was pointed out that tens of thousands of permanent posts for ANMs were duly sanctioned. The State was moving with only a handful of ANMs and that too on contractual basis, contracts being for short terms. The only thing about this was



the exploitation and the public sufferings. Even in Medical Colleges, the situation was pathetic. The Indian Medical Association and the Medical Council of India expressed severe concern over the shortage of ANMs. The Primary Health Centres were languishing. Upon this Court's intervention, when the figures were given, they were alarming. This Court, in the writ proceedings, then directed that vacancies, which were subsisting for decades, should be filled up expeditiously. Advertisement had been issued but no effective steps were taken thereafter. As is usual in this State, nothing is done and no orders of this Court are complied with unless they are proceeded with execution proceedings like contempt. In the contempt proceedings, various issues were noted and the apathy of the Government is also noted. For decades, exploitation continued when it came to renewal of contracts. Even though they were permanent sanctioned posts, State indulged in exploitation at all levels by making contractual appointments. The ANMs were deprived of not only continuity of service but retiral benefits. This, in the long run, would have saved money for the State but was detrimental for the employees and their future. Ultimately, under threat of contempt, State involved the Bihar State Staff Selection Commission's service (for brevity, *the Commission*) which itself was dragging its feet in proceeding expeditiously in spite of estormical vacancies. Steps having been



taken, this Court, by various orders, held that as appointments were being inordinately delayed, the contractual ANMs would not be deprived of selection on account of overage. They had been working for decades on contract and when permanent employment was to be considered, they were likely to be rejected as having become overage. The result would be that in spite of over a decade's experience, in spite of being qualified, they were to be all terminated.

2 So far as the present petitioner is concerned, in spite of the repeated orders of this Court that those ANMs who were working and who had applied for being made permanent, their candidature would not be rejected on ground of overage as they had been working since the time they were well within the age limit. The candidature of the present petitioner, in spite of this, though otherwise qualified on merit for selection, was rejected on the ground that on the cut off date that is 01.08.1999, she was 23 days overage being 38 years and 23 days old. It is not in dispute that she had been working as an ANM from long before this date, though on contract. What we find curious is in these proceedings earlier, a stand was taken by the State that she had not qualified on merit, only to deliberately mislead this Court. The petitioner brought on record the counter affidavit filed by the Commission in a collateral proceedings wherein categorically, it had stated that this petitioner's candidature was rejected solely on the



ground that she was overage. Obviously, this was an attempt to deliberately mislead this Court. It is under those circumstances, being fed up with the dilatory and negative attitude of the State, this Court was compelled to summon the Chairman of the Commission. A further show cause has been filed supported by affidavit duly sworn by the OSD of the Commission wherein again, there is a change of stand. Now, instead of continuing with the stand that she had not qualified on merit, the stand is taken that the maximum age, as on 01.08.1999, was 38 years and petitioner, being 38 years and 23 days, was overage. The first thing to be noted is this affidavit is virtually acceptance that the earlier stand was a false stand. In support of the contention, it is stated that the Commission, through its Secretary, had issued an advertisement in the year, 2014 under which this petitioner was being considered. No doubt, that advertisement, in Clause (2) thereof states that the cut off date as on 01.08.1999 would be 38 years in respect of ladies but what is not being referred is Clause (3) thereof which says that for people who have been in Government service earlier, there would be a further age relaxation of five years, as specified in Clause (3). This Clause (3) has no exception nor is it limited in its application, still the petitioner, who was undisputedly in Government service, though on contract prior to cut off date, is not being given age relaxation.



3 On behalf of the Chairman of the Commission and in presence of its Chairman, it is stated that if the Court so directs, benefit would be granted to the petitioner and her like. It is not a bounty or a gratuitous act of the State. It is for the State to do what is just and proper. If the relaxation was available, it ought to have been granted without litigation.

4 I, accordingly, direct that petitioner and her like be granted the age relaxation forthwith and the selection process be completed without any further complications or technicalities. That is the only way in which contempt can be purged. This Court would not say more especially in respect of the attitude of the Commission in trying to deliberately mislead this Court on earlier occasions.

5 With the aforesaid observations and directions, these proceedings stand terminated.

(Navaniti Prasad Singh, J)

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