

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1683 of 2016
IN
Civil Writ Jurisdiction Case No. 9727 of 2008**

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Dr. Sharda Pandey W/O of Dr.Nagendra Pandey Resident of village Ramgarh
,Distt.- Kaimur

.... Appellant

Versus

1. The State of Bihar through the secretary,Department of health Medical Education and family welfare ,Govt of bihar,Patna
2. Additional secretary,Department of health Medical Education ,Govt.of Bihar,Patna
3. Deputy secretary,Department of health Medical Education and family Welafare ,Govt.of Bihar,Patna
4. The Director, Indigenous system of medicine,Govt of Bihar,Patna
5. The principal in-charge Government Dhanwantari Ayurvedic college Ahiraul,Bauxer
6. Dr. Deobrat Narayan, Fathers name not known to the petitioner superintendent, Govt Ayurvedic college and Hospital, Patna
7. Dr,Anirudh Mishra,Fathers name not known to the petitioner Director Indigeneous system to medicine,Bihar ,Patna
8. Shri Zamiruddin Ansari, Fathers name not known to the petitioner (respondent no.7 to 9 members of the review committee constituted in the view of CWJC No.10301 of 2003 and analogous cases)
9. Shri Amendra Narayan Singh, Fathers name not known to the petitioner, the then special secretary, Department of health, chairman of the screening committee constituted as foresaid

.... Respondents

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Appearance :

For the Appellant : Mrs. Archana Sinha @ Archana Shahi, Advocate
Mr. Alok Kumar Shahi, Advocate
For the Respondents : Mr. Vikash Kumar, SC-11

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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: 01-08-2017

A bunch of writ applications were taken up by the
learned single Judge and decided together dealing with each and
every case on their individual merits as well with regard to their right



for being adjusted on various diverse posts of what is known as Dhanwantari Ayurvedic College, Ahirauli in the district of Buxar, which was subsequently taken over by the State of Bihar. Since it is a very detailed order running into almost 231 pages, we are not concerned about what has been decided with regard to other petitioners because the issue before this Court is in relation to the present appellant going by the name Dr. Sharda Pandey. Her case for absorption was dealt with by the learned single Judge in some detail starting from paragraph 250 onwards with the conclusion having been reached in paragraph 253 of the impugned order. Since they have bearing on the arguments, which have been made before us, that the Court reproduces the above paragraphs for ready reference :

“250. The petitioner no.14, Dr. Sharda Pandey has come out with a claim of absorption on the post of either Lecturer or in alternative on the post of Nursing Sister. Learned counsel for the petitioner no.14 explains that it is true that on 20.2.1982 when the petitioner Dr. Sharda Pandey got appointed on the post of Nursing Sister under the orders of the Secretary to the Governing Body, she did not possess the prescribed qualification for the post of Nursing Sister i.e. diploma in Nursing under Bihar Nurses Registration Council, but then she ultimately had her GAMS i.e. degree in Ayurvedic Medicine in 1983 and was ultimately promoted from the post of Nursing



Sister to Demonstrator by the Governing Body on 11.9.1983 and thereafter promoted on the post of Lecturer on 31.12.1985.

251. In the considered opinion of this Court, Dr. Sharda Pandey, the petitioner no.14, cannot establish her claim of being Lecturer on the date of taking over i.e. 9.12.1986 giving it retrospective effect on 1.6.1986. The reason for the same will be that this Court has already in the judgment of Dr. Satyadeo Pandey (supra) had fixed a cut off date of 25.3.1984 whereafter the decision of the Governing Body has not been recognized and, therefore, if the petitioner claims becoming a Lecturer by some decision of the Governing Body dated 31.12.1985, that by itself will be a major impediment for absorption of the petitioner Dr. Sharda Pandey on the post of Lecturer. That in fact, will be the reason in not allowing the absorption of Dr. Sharda Pandey on the post of Lecturer because there is a requirement under the Statute framed by the Bihar University laying down the post, qualification and experience of three before becoming eligible for appointment on the post of Lecturer and, therefore, if the petitioner had passed GAMS examination in the year 1983 and at that point of time she was working as a Nursing Sister followed by alleged resolution of the Governing Body of promotion from Nursing Sister to the Demonstrator, this all will only lead to only one and one conclusion that Dr. Sharda Pandey will not be entitled for absorption on the post of Lecturer in the



College.

252. The alternative submission that at least she will be absorbed on the post of which her initial appointment was made i.e. post of Nursing Sister made on 20.2.1982 because there is at least one post of Mid Wifery in the case of GAMS completed by the petitioner in the year 1983, will also be of no avail. For the post of Nursing Sister, there is a requirement of Diploma in Nursing or Diploma of Nursing Attendant include one paper of Mid Wifery that apart for holding of Nurse one has to be essentially registered with Bihar Nursing Registration Council.

253. As with regard to the case of petitioner no.2 Smt. Indu Kumari and petitioner no.14 Dr. Sharda Pandey claiming to be appointed on the post of Nurse/ Nursing Sister, this Court would find that petitioner no.2 has no qualification for the post of Nurse. According to her own case she was appointed on the post of Nurse on 23.3.1982. Her letter of appointment, however, is not on record and her appointment has been made also by the Secretary, who under the Statutes has been vested with no power of making appointment on any non-teaching post. To top it all, her so called confirmation of appointment by the Governing Body is admittedly after cut-off date under the judgment of this Court i.e. 26.3.1984. Thus, no sanctity can be given even on the process of appointment, inasmuch as her appointment was not made by the competent authority. Finally, this Court



would find that petitioner no.2 also does not possess requisite qualification of Nurse for which not only passing of Nurses course examination is compulsory but also registration by the Bihar Nurses Registration Council is sine qua non. Thus, this Court will not find any difficulty in rejecting the case of claim of absorption of petitioner no.2 Smt. Indu Kumari.

254. Reverting back to the case of petitioner no.14 Dr. Sharda Pandey, this Court would find that her appointment was allegedly made by the Secretary on 20.2.1982 on the post of Nursing Sister. On the date of her appointment she was simply Matriculate and therefore, when she alike Smt. Indu Kumari, petitioner no.2, did not possess the requisite qualification for the post of Nurse/ Nursing Sister, her alleged approval of appointment by the Governing Body on 11.9.1983 can also hardly make any difference. It is quite strange that the petitioner no.14 also claims to have been promoted on the post of Female Medical Officer in the Department of Gynecology and is said to have submitted her joining on 14.7.1983 in view of an order of the Secretary of the College dated 14.7.1983 promoting petitioner no.14 on the post of Female Medical Officer cum Demonstrator. The claim of petitioner no.14 is that she had passed her GAMS examination in the month of May, 1983 and therefore, she was promoted on the post of Demonstrator, which is also not permitted under Chapter XVI-B of the Statutes where the post of



Demonstrator is meant only for direct recruitment. The plea of her promotion, therefore, also does not find any merit and in any event her claim that eventually she had got promoted by the resolution of the Governing Body on 31.12.1985 on the post of Lecturer will have no sanctity in the eye of law because she did not possess the requisite qualification of three years teaching experience prescribed for the post of Lecturer under the Statutes. This Court, therefore, will find it difficult to issue any direction for absorption of petitioner no.14.”

Much effort was put by the learned counsel for the appellant in justifying her appointment but the deeper we went to her appointment and so called absorption by the erstwhile managing committee, the murkier it became with regard to the manner in which she came to be appointed and the various posts which were offered to her in quick succession starting from Nursing Sister to the post of Demonstrator and even a Lecturer. Her initial qualification at the time of entry with effect from 20th February, 1982 was on the basis of qualification of *Praveshika*, which is a spurious kind of a degree, equivalent to matriculation, and then when she came to be appointed as a Nursing Sister, she was not even qualified, but only had taken the examination of G.A.M.S. These facts have been again reiterated by us after due examination of the documents, which were part of the



writ application, to be doubly sure that the observation and the decision of the factual aspect of the matter did not suffer from any error so far as order of the learned single Judge is concerned.

We are of the opinion that the appellant had no qualification except may be that she was close to the powers that be of the managing committee to get accommodated in any of the positions and posts, which was offered to her prior to take over of the college in question.

We are satisfied that the learned single Judge has made no error in refusing to given any kind of direction for absorption of the appellant on any post whatsoever.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	NAFR
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