

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1473 of 2016
IN
Civil Writ Jurisdiction Case No. 10354 of 2008**

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Vidyavati Pathak Wife of Dharamdeo Pathak, Resident of Village Niyazipur, P.S.
Simari, District- Buxar.

.... Petitioners - Appellant

Versus

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

.... Respondents / Respondents.

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Appearance:

For the Appellant/s : Mr. Shravan Kumar, Sr. Advocate and
Mr. Ashok Kumar Dubey, Advocate.

For the Respondent/s : Mr. PAAG.

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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: 13-12-2017

Heard learned Senior Counsel for the appellant and
learned counsel for the State.

2. The issue of absorption or adjustment of the present
appellant was considered by the learned single Judge from Paragraph
271 to Paragraph 274 in CWJC No. 7246 of 2008 & analogous cases,
which reads as under:



“Re.: C.W.J.C. No. 10354 of 2008

271. In this case the sole petitioner Vidyavati Pathak claims that on the basis of her qualification of only Madhyama, she was appointed on 12.2.1982 by the Secretary to the Governing Body of the College on the post of Nursing Sister and that though she does not have qualification prescribed for the post of Nursing Sister, but then she can be absorbed on the post of Dai (maid).

272. The present case in fact will be one of the worst cases of illegal appointment being made by the Secretary of the College. For the post of Nursing in a medical college, the minimum requirement would be the diploma in Nursing followed by registration before Bihar Nursing Registration Council. Thus, the petitioner who had only a qualification of Madhyama and thus having some an idea of the subject of Sanskrit could not have in any view of the matter become a Nurse in Medical College Hospital. It is this aspect of the matter, which has all along been considered to be the impediment for absorption of the petitioner and thus, this Court does not find any error in refusing absorption to the petitioner namely Vidyavati Pathak.

273. The submission of Mr. Shivendra Kishore, learned Senior counsel appearing on behalf of the petitioner, that since in other cases, people have been sought to be absorbed on equivalent post, the case of the petitioner should also be considered for her absorption on the post of Dai. , if allowed, it will ultimately mean that a person if he/she cannot be absorbed on the post of Professor, he at least can be absorbed on the post of Peon. That however is not the concept of absorption under the Taking Over Act. The primal consideration of the Government for deciding the case of absorption would be as to on what basis the person concerned was holding the post on the cut off date i.e. 30.6.1986 and whether for holding such post his or her appointment was made as per prescribed procedure and also having the requisite qualification.

274. Applying the aforesaid test, this Court will have no difficulty in rejecting even that part of the submission of



Mr. Shivendra Kishore that the case of the petitioner namely Vidyavati Pathak should be considered for absorption on the post of Dai (Maid). In the result, this writ application is dismissed.”

3. The reasons given by the learned single Judge for dismissing the Writ Application (CWJC No. 10354/2008) by refusing to make any adjustment of the present appellant on any post starting with the post of Nursing Sister with a qualification of Madhyama will be only doing damage and harm to the institution because Madhyama may be equivalent to Matriculation but Madhyama degree can only beget some kind of corresponding engagement and employment for teaching or otherwise in Sanskrit and not for becoming either a Nursing Sister or Dia (Maid) in an Aayurvedic College which has been taken over by the government.

4. The Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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