

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1468 of 2016

IN

Civil Writ Jurisdiction Case No. 7736 of 2008

- =====
1. Ramjee Pandey Son of Late Rajendra Pandey, Resident of Village Sohanipatti, P.S. Buxar Industrial Area, District- Buxar.
 2. Murli Dhar Singh, Son of Late Haridndra Singh, Resident of Village Dalsagar, P.S. Buxar, Industrial Area, District- Buxar.

.... Appellant/s

Versus

1. The State of Bihar through the 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, Govt. of Bihar, Patna.
6. The Screening Committee, through the Secretary, Health Medical Education and Indigenous Medicine Department, Govt. of Bihar, Patna.
7. Nagendra Choubey, Son of Late Paras Nath Choubey, Resident of Dalsagar, P.S. Buxar Industrial Area, District- Buxar.
8. Bindhyachal Tiwary, Son of Late Gourishankar Tiwary, Resident of Tiwaripur, P.S. Buxar Industrial Area, District- Buxar.
9. Janardan Mishra Son of late Courishankar Mishra, Resident of Village Sonbarsa, P.S. Buxar Industrial Area, District- Buxar.
10. Surendra Nath Singh, son of Rama Prasad Singh, Resident of Village - Dalsagar, P.S.- Buxar, Industrial Area, District- Buxar.
11. Ramji Choudhary Son of Late Khalifa Choudhary, Resident of Village- Manki, P.S.- Bangangola, District- Buxar.
12. Uma Shankar Yadav, Son of Late Makhan Yadav, Resident of Village



Dalsagar, PS Buxar Industrial Area, District- Buxar.

13. Sugrib Singh, Son of Late Suchit Singh, Resident of Village- Sirsa, P.S.- Rajpur, District- Buxar.

14. Shashi Bhushan Mishra, Son of Gopeshwar Mishra, Resident of Village- Churamanpur, P.S.- Buxar Industrial Area, District- Buxar.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shravan Kumar, Sr.Adv.

Mr. Ashok Kumar Dubey, Adv.

Mr. Uma Shankar Singh, Adv.

Smt. Mamta Vijaya, Adv.

For the State : Mr. Prashant Pratap, GP-2

Mr. Dev Kumar Pandey, AC to GP-2

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 counsel for the appellants and counsel
for the State.

There are two appellants in this case. The case of the
first appellant has been dealt with by the learned Single Judge in
following terms:-

“Re. C.W.J.C.No. 7736 of 2008

*308. In this case there are in all ten petitioners, out of
whom petitioner no.1 claims to have been appointed on the
post of Store Attendant on 15th January, 1982 under the
order of the Secretary of the governing Body and his such*



appointment is said to have been made permanent by the Governing Body of the College by the alleged Resolution No.13 dated 14th September, 1985.

309. Learned counsel for the petitioners has submitted that there was a duly sanctioned post of Store Attendant. He has also submitted that the Review Committee had not even considered his case while considering the case of Ramji Pandey and Nagendra Chaubey.

310. Learned counsel for the State, on the other hand, has shown from the CCIM norms that there was no sanctioned post of Store Attendant and in fact there was no post in the Chikitsalaya (dispensary) as was mentioned in the appointment letter of the petitioner by the Secretary of the College. In other words, he submits that not only the Secretary to the College in violation of the Statutes relating to power of the Governing Body, the President and its Secretary had illegally appointed the petitioner but his appointment was also made against an unsanctioned and non-existing post of Store Attendant.

311. Learned counsel for the petitioners, in reply, has submitted that though it is true that there is no sanctioned post of Store Attendant under the CCIM norms but then he has referred to a post of Outdoor Attendant and submits that the petitioner's absorption could be made at least on the post of Outdoor Attendant.

312. This Court fails to understand the logic of such argument, inasmuch as once it is admitted that there was no post of Store Attendant under the CCIM norms, the petitioner cannot claim absorption against the post of Outdoor Attendant. Thus, his appointment itself being against a non-existing and unsanctioned post, his claim for absorption has been rightly rejected and this Court does



not find any infirmity in the same.”

The reason provided by the learned Single Judge for dismissing the case of the first appellant was a good reason which does not require interference.

Coming to the case of the second appellant the reason for rejection of the claim of this appellant has been indicated in paragraph 325 onwards by the learned Single Judge:-

“325. The case of petitioner no. 9 Murlidhar Singh while claiming absorption on the post of Pharmacist is that though his qualification was only Praveshika (Matriculation), he was appointed by the Secretary to the Governing Body of the College on 10.11.1981 and after he had joined the post on 22.1.1982 he was made permanent on the post of Pharmacist on 14.9.1985. His absorption, however, was refused by the first Screening Committee and led to his termination of service on 29.8.2003 on the ground that he had no qualification for the post of Pharmacist and a simply Matriculate could not be appointed under any norms on the post of Pharmacist.”

Obviously the Secretary of the erstwhile Ayurvedic College just on the verge of the take over of the institution had free run and obviously for consideration extraneous accommodated and appointed everybody and anybody on whatever post which was available for sale without verifying whether the person had requisite qualification or eligibility to be appointed on such post.



The State Government cannot be saddled with the decision which has been taken so recklessly by the Secretary of the erstwhile private managing committee.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.12.2017
Transmission Date	

