

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1574 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 2595 of 2015
Alongwith
Interlocutory Application No. 7155 of 2015.

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Seema Suman Kumari, D/o Raj Nandan Pd. Singh, C/o Niranjan Kumar Singh
Resident of Village - Jaytipur, P.S- Naubatpur, District - Patna.

.... Petitioner- Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner Health Department, Government of Bihar, Patna.
3. The Director (Health) Government of Bihar, Patna.
4. The Deputy Director (Health) Patna Division District Patna.
5. The District Health Officer, Patna.
6. District Magistrate Patna (D.M)
7. Civil Surgeon, cum Member Secretary District Health Committee, Patna.
8. Incharge Medical Officer sub Divisional Hospital Danapur, Patna.
9. Incharge Medical Officer Sub Divisional Hospital Masurhi, Patna.
10. Pooja Singh D/o Pramod Kumar Resident of Village - Friday Bazar Q. No.-161, O.S- Gandhi Nagar, District - Bokaro.
11. Rashmi Sinha D/o Nagendra Prasad, Resident of Village / Mohalla Patna Ciy P.S- Khajekalla, District - Patna.
12. Ragni Kumari D/O Surendra Pandey, wife of Diwakar Kumar Sharma Resident at Village - Panchwati Nagar Bazar Samiti, P.S- Bahadurpur, District - Patna.

.... Petitioners-Respondents

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Appearance :

For the Appellants : M/S. Banwari Sharma and Shiv Kumar,
Advocates.

For the Respondents : Mrs. Binita Singh, S.C.28 and Mr. Siddharth Shankar
Pandey, A.C. to S.C. 28.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)
Date: 07-02-2017

Re.: Interlocutory Application No. 7155 of 2015.

The application for condonation of delay of 66 days in filing
of the present Letters Patent Appeal.



For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re. : Letters Patent Appeal No. 1574 of 2015.

This Letters Patent Appeal is directed against the order dated 07.04.2015 passed by the Learned Single Bench of this Court in C.W.J.C. No. 2595 of 2015, whereby the writ application filed by the appellant herein and others for quashing the order, of termination of their services, contained in Memo No. 03 dated 02.01.2015 issued from the office of the Deputy Superintendent, Sub-Divisional Hospital, Danapur, vide Annexure-1 to the writ petition, has been dismissed.

The brief facts leading to the present Letters Patent Appeal are as under:-

The appellant besides others were engaged temporarily as Nurse Grade 'A' in the Sub-Divisional Hospitals against the fixed emolument of Rs. 20,000/- per month, on contract basis with the condition that they will never claim for regular appointment. The initial contractual engagement was made for a period of three years with the option of further extension subject to their services being found satisfactory. The appellant was not paid any amount towards her emolument, therefore, she along with similarly situated Nurses



made several applications before the Civil Surgeon, for payment of their emolument, whereupon Deputy Superintendent, Sub-Divisional Hospital, Danapur, wrote a letter to the Member Secretary-cum-District Health Society, Patna, seeking necessary official information regarding the appointment of the appellant and others because there was no official information ever received to the office of the Deputy Superintendent, Sub-Divisional Hospital, Danapur, regarding the contractual engagement of such Nurses, Grade 'A', working in the Sub-Divisional Hospital, Danapur. The Deputy Superintendent, Sub-Divisional Hospital, Danapur, again wrote a letter to the Civil Surgeon, Patna, on 11.10.2014, seeking instruction in respect of payment of fixed emolument to the appellant and others and also about confirmation of their selection and appointment date.

The District Magistrate, Patna, constituted a three members Enquiry Committee regarding the appointment of Nurse Grade 'A', made by the then Civil Surgeon, who were working in the Danapur and Masaurhi Sub-Divisional Hospital. The said committee submitted its enquiry report, which is at Annexure-'D' to the supplementary counter affidavit of the respondent no.7, it reveals that the letter of appointment was issued on 31.12.2013 but there is no record of selection list in the office of District Health Society, Patna, nor there is any approval of the District Magistrate in the matter of engagement of appellant and others. The enquiry report further reveals that there



had been interpolation of letter numbers in the Dispatch Register of District Health Society. The letter numbers mentioned on the appointment letter of such Nurses including the appellant were already been issued, in different context earlier, which were subsequently interpolated.

The appellant has challenged the order of the Learned Single Bench, on the ground that appointment was made on the basis of open advertisement and following the prescribed procedure of selection but the same being not considered by the Learned Single Bench.

Annexure-‘A’ to the counter affidavit of Respondent no.7 shows that District Magistrate-cum-Chairman of the District Health Society will be the appointing authority of Nurse Grade ‘A’ and further the merit list was to be approved by the Selection Committee headed by the District Magistrate or any senior officer nominated by him. The enquiry report, Annexure-D to the supplementary counter affidavit of the Respondent no.7 indicates that there was no selection list and merit list, available in the record of District Health Society nor the appointment of the appellant besides others were approved by the Selection Committee and further regarding the selection and appointment of the appellant, there was no official communication by the then Civil Surgeon-cum-Member Secretary to the Sub-Divisional Hospital, where they were working.

Considering the facts and circumstances in totality, we are of



the view that the initial engagement of the appellant was not made following the procedure prescribed for the selection and appointment, therefore, it is an illegal appointment and it appears to be vitiated by the manipulation also. Law is well settled that if appointments have been made in violation of regulations or administrative instructions, they are invalid and no right accrues to the concerned employees and it is open to the competent authority to cancel such appointment. An appointment may be illegal for various reasons and in the present case there are such illegalities indicated above, therefore, no right vests in the appointee.

In our considered opinion, the order of the Learned Single Bench, requires no interference.

This Letters Patent Appeal is, accordingly, dismissed.

(Sudhir Singh, J)

(Hemant Gupta, ACJ) I agree.

(Hemant Gupta, ACJ)

U.K./-

AFR/NAFR	NAFR
CAV DATE	23.01.2017.
Uploading Date	07.02.2017.
Transmission Date	

