

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.12423 of 2010**

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Smt. Archana Kishore, wife of Sri Brij Kishore Sajjan, R/O Mohalla- Tarkeshwar Path, Chiraiyatar, P.S.- Kankarbagh, Distt.- Patna.

.... Petitioner

Versus

1. The State Of Bihar, through the Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, Patna
2. The Director in Chief, Health Services, Govt. of Bihar, New Secretariat, Patna
3. The Bihar College of Physiotherapy and Occupational Therapy, Faculty of Medicine, Viklang Bhawan Hospital, Kankarbagh, Patna, represented through its Head of the Department-Cum-Controller
4. The Head Of The Department, Bihar College of Physiotherapy and Occupational Therapy, Faculty of Medicine, Viklang Bhawan Hospital, Kankarbagh, Patna-800020

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh, Advocate
For the Respondent/s : A.C. to G.A.-2.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-03-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the petitioner has made a prayer for grant of salary for the period she has discharged the duty as 'Ward Sevika'.

3. An advertisement was published for the appointment of



‘Ward Sevika’ in the pay scale of Rs.2550-3200/-. The petitioner had applied against that vacancy, was appointed vide letter no.69/09 dated 19.02.2009, accordingly, she joined the post of ‘Ward Sevika’ on 24.02.2009 in the office of respondent no.4 i.e. Head Office. On account of lack of teaching staff, vide Office order dated 17.09.2009 bearing memo no.547/09(C)/BCPO the petitioner was allotted the duty of Ward Attendant along with others. Accordingly, she started discharging her duties, but the petitioner was not paid the salary. For that, she approached the higher authority but she did not receive any response. The petitioner has also filed representation for payment of regular salary as well as arrears of salary and later on, vide Office Order no.BCPO/73/2009 dated 10.12.2009, it was communicated to the newly appointed persons including the petitioner by the Head of the Department that no records of the petitioner are available as his predecessor had not handed over the same, which compelled the petitioner to approach this Court in C.W.J.C. No.17675 of 2009 and this Court had disposed of the case with a direction to consider the case of the petitioner and take decision within a period of four weeks from the date of receipt/presentation of this order. Accordingly, the petitioner filed a representation dated 08.03.2010 along with the copy of the order of this Court before the Director-in-Chief, Health Services, Government of Bihar, Patna, who instead of granting the



benefit has stopped her entry in the office.

4. In the counter affidavit, the letter of the Director-in-Chief dated 13.04.2010 has been attached, wherein it has been mentioned that the petitioner was appointed against the post which was not sanctioned by the Government, inasmuch as the then Head of the Department Sri Mohan Prasad did not have jurisdiction to make appointment of the petitioner.

5. In the present case, the petitioner has not challenged that order, whereby it has been held that the posts were not available as well as the person who had appointed her did not have jurisdiction to appoint her, but limited prayer has been made for payment of salary. It is an admitted fact that the petitioner has entered into the service after following the proper procedure as an advertisement was published, she appeared in the interview and was selected on the post of 'Ward Sevika'. It is very difficult for a person when an advertisement is published to know as to whether the posts are existing or whether the person who has appointed her having a power to appoint her or not, but certainly it is an admitted fact that the petitioner has discharged the duty of 'Ward Sevika'.

6. In such view of the matter, this Court directs the



respondents to pay the salary to the petitioner for the period she has discharged the duty of ‘Ward Sevika’ without unnecessary delay preferable within a period of four months from the date of receipt/production of a copy of this order.

7. With the aforesaid observations and direction, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	24.03.2018
Transmission Date	N/A.

