

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1344 of 2016

In

Civil Writ Jurisdiction Case No. 8422 of 2008

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Dr. (Mrs.) Smita Singh, wife of Dr. Anil Kumar Singh, r/o 181- B, Sri Krishnapuri, P.S. S.K. Puri, Town + District- Patna presently working as Assistant Director, Indira Gandhi Institute of Cardiology, Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Mr. R.K. Mahajan, The Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, New Secretariat, Patna.
3. Mr. Suresh Chandra Verma, The Joint Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
4. Mr. Azad Hind Pd. The Director in Chief, Health Services, Bihar, Patna.
5. Dr. Harendra Kumar, The Director, Indira Gandhi Institute of Cardiology, P.M.C.H. Campus, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Ojha, Adv.

For the Respondent/s : Mr. Ashok Kumar Keshri

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

6 11-09-2018 This contempt application has been preferred seeking initiation of a proceeding of contempt against the opposite parties for their willful disobedience shown to the order dated 07.08.2015 passed in C.W.J.C. No. 8422 of 2008. The operative part of the order of the learned writ court in Paragraph Nos. 18 and 19 of the order dated 07.08.2015 read as under :-

“18. The cases of the petitioners of these two cases for their promotion with all other eligible persons shall also be considered only as per the provisions of the Rules dated 31.07.2014 within the same period.



19. This Court must also clarify that from today, no appointment/promotion in any of the posts covered by Rules shall be made in the I.G.I.C till the aforementioned Rules of appointment/promotion dated 31.07.2014 is given effect to in letter and spirit. In other words, the direct appointment on any vacant post in I.G.I.C. as per the Rules shall be made after following the prescribed procedure in the Rules including issuance of advertisement in leading newspapers having an all India circulation and the selection to be made thereafter following the mandate of Articles 14 and 16 of the Constitution of India whereas no promotional in I.G.I.C. post shall be filled up by making any ad hoc and/or interim arrangement but only on strict compliance of the provisions of Rules framed on 31.7.2014.”

It appears that pursuant to the order of this Court steps were taken to consider filling up the post covered by the Rules and in the process a provisional gradation list was circulated vide Memo No. 494 (17) dated 01.07.2016 inviting objections against the provisional gradation list. Thereafter final gradation list was also published vide Memo No. 768 (17) dated 03.11.2016 issued under the signature of Joint Secretary, Department of Health, Government of Bihar. It is stated in the show cause that even after publication of final gradation list some aggrieved person submitted a fresh objection regarding the anomalies in the gradation list and thereafter matter was duly examined by the



department and finally amended final gradation list was published vide Annexure-‘B’ to the show cause filed on behalf of opposite parties. It is this gradation list in which Dr. Birendra Kumar Singh has been shown at Serial No. 1 and by virtue of his seniority over and above this petitioner he has been considered for promotion to the solitary post of the Deputy Director (Pediatrics Cardiology). It is the stand of opposite party that because the petitioner was placed at Serial No. 2 in the gradation list and she had not raised any objection to the same, her case was not considered as no vacancy remained after filling up the post by the incumbent at Serial No. 1.

Learned counsel for the petitioner has strenuously argued and tried to demonstrate before this Court that the petitioner had been raising her grievance against the adhocism which was being followed in the matter of promotion in I.G.I.C., Patna and for that reason she has been made a victim by not considering her case and also by giving privilege to Dr. B.K. Singh over and above the petitioner.

Learned counsel has tried to show that how this petitioner is to be treated as senior to Dr. B.K. Singh. It is also stated that Dr. B.K. Singh who was working in P.M.C.H. as a Deputy Superintendent I.G.I.C. as an Assistant Director (Cath



Lab), he could not have been promoted to the post of Deputy Director (Pediatric Cardiology). His promotion was result of adhocism prevailing in the IGIMS and it has been merely reiterated in the name of following the Rules of 2014. It is also submitted that the contempt application was already pending and petitioner had raised her grievance over the provisional gradation list, but she was given to understand by the Under Secretary of the department that because contempt application was pending for consideration before this Court, no representation on her behalf could be considered during pendency of the application.

On the other hand, learned AAG-12 submits that whatever be the grievance of the petitioner, the issues which have not been considered and decided by the learned writ court cannot be gone into in the contempt jurisdiction. It is submitted that if at all the petitioner has a complaint against the promotion given to Dr. B.K. Singh in the name of following the Rules, 2014 and she is of the view that his entry in the I.G.I.C., Patna in the rank of Deputy Director (Pediatric Cardiology) is a result of adhocism prevailing in the IGIMS, such matter shall be agitated before an appropriate jurisdiction in accordance with law.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the writ application



the learned writ court has not gone into the issues which are being canvassed before this Court in its contempt jurisdiction. Learned writ court had only directed the I.G.I.C. to proceed for appointment/promotion against the post covered by the Rules in accordance with the Rules which came into effect from 31.07.2014. There is no direction for deciding any issue between petitioner and said Dr. B.K. Singh inter se.

In the aforesaid view of the matter, this Court is of the opinion that sitting in its contempt jurisdiction it would not be just and proper for this court to look into the issues now being canvassed before this Court and to take a decision. This should however not to be treated as approval of action of the opposite party. The petitioner will be at liberty to take up all such issues which are available to her in an appropriate jurisdiction in accordance with law.

This application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

Ved/-

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