

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1135 of 2016

Vidyawati Sinha @ Kumari Vidyawati Sinha Wife of Sri Nawal Kishore Prasad Singh Resident of Village- Teka Bigha, Police Station -Chandi, District Nalanda.

... .. **Petitioner**

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. Director-in-Chief, Health Services, Bihar, Patna
3. Civil Surgeon -cum-Chief Medical Officer, Darbhanga.
4. Incharge Medical Officer, Primary Health Centre, Baheri, Darbhanga.

... .. **Respondents**

Appearance :

For the Petitioner	:	Mr. Shiv Kumar, Advocate
For the Respondents	:	Mr. N.K. Singh, Standing Counsel No.2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 21-02-2019 Heard learned counsel for the petitioner as well as learned counsel for the State.

Petitioner was appointed as the Auxiliary Nurse Midwifery (ANM) on 13.8.1991. Many years later an issue was raised regarding her appointment not being in accordance with law. The petitioner was therefore terminated on 28.6.2004. Termination of the petitioner being in violation of Rules of fairness and without observing the principle of Natural Justice order of termination was set aside by this Court in the writ proceeding arising out of C.W.J.C.No. 6617 of 2003. On 9.9.2008 again the petitioner's service was terminated. This time it was on the basis of report of the five members committee. Taking note of the fact that the report of the five members committee was without affording any opportunity to the petitioner, this Court in the petitioner's second writ proceeding arising out of C.W.J.C.No. 17370 of 2009, affirmed with some



modification in the proceedings LPA No. 58 of 2013, has been

pleased to observe as follows:-

“Whether it be the first termination of the respondents on 28.06.2004 and respective dates or whether it be the subsequent five man Committee report dated 09.09.2008 both are not sustainable.

The five man Committee report on the face of it suffers from the vice of violation of principles of natural justice and is unsustainable on that ground alone. The law stands well settled that even in matter of forged appointment proper proceedings are required to be held with an opportunity of defence. Reference may be made to 2007 (12) SCC 146 (Punjab State Electricity Board & Ors. Vrs. Leela Singh) observing at paragraph- 5 as follows:-

“5. The charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee”.

If an appointment has been obtained by forgery, long continuance may not suffice simplicitor to confer a camouflage of legality.

In conclusion, we find no reason to interfere with the order under appeal to the extent that it directs the reinstatement of the respondents but leave it open for the appellants to proceed afresh in accordance with law, if so advised.

The appeal is dismissed with the aforesaid modification.”

Observation of the Division Bench in case of the



petitioner was clear and explicit that only in a duly constituted proceedings the issue was to be enquired into regarding her appointment being legal or illegal. The same has not been done. Again on basis of a show cause issued to the petitioner the Civil Surgeon cum Chief Medical Officer, Darbhanga (respondent no.3) has terminated the service of the petitioner by order dated 20.11.2015 without resorting to a duly constituted proceeding.

In view of the specific order of the Division Bench of this Court in favour of the petitioner that only after affording the petitioner an opportunity of defence the action was to be taken, this Court would have no hesitation in setting aside order dated 20.11.2015 being passed without resorting to any proceeding and only on basis of show cause. Order dated 20.11.2015 issued by the Civil Surgeon cum Chief Medical Officer, Darbhanga (respondent no.3), is therefore quashed.

Writ petition is allowed.

As a result of quashing of the impugned order, petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

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