

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17179 of 2019

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Ganga Devi, W/o Rajendra Sah, Resident of Ward No.3, Janjharpur R.S.
Navtol Purni Pokhar, Behat South P.S., Dist. Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Govt. of Bihar, Patna.
2. The Director in Chief (Decease Control) Health Services, Bihar, Patna
3. The Civil Surgeon Cum-Chief Medical Officer Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinay Raj, Advocate Mr. Gagan Deo Yadav, Advocate Mr. Alexander Ashok, Advocate
For the State	:	Mr. S.D. Yadav, A.A.G. 9 Mr. Anil Kumar Verma, A.C. to AAG-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-10-2019

Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order dated 28.06.2019 passed by the Director-in-Chief (Disease Control) Health Services, Government of Bihar, communicated to the petitioner to letter dated 03.07.2019 whereby her services have been terminated on the ground that her initial appointment made in the year 1995 itself was invalid and beyond jurisdiction.

3. I have perused the impugned order. I find that the Civil Surgeon-cum-Medical Officer had appointed the petitioner as 'Lady Ward Attendant' by an order dated 29.07.1995 in the pay scale of Rs.775-12-955-14-1125 on the recommendation made by



the then Deputy Minister, Water Resource Department and the Chief Minister of Bihar.

4. The fact that recommendation by the Deputy Minister, Water Resource Department, and the Chief Minister of Bihar, was the basis for petitioner's appointment against the said post is mentioned in the order itself whereby she was appointed.

5. The Deputy Minister, Water Resource, did not have any concern with the said appointment and the Chief Minister of Bihar could not have issued any letter asking the Civil Surgeon to appoint the petitioner against the said post. There is no rule, no circular nor any guideline which could have authorized the Chief Minister of Bihar to write a letter to Chief Civil Surgeon-cum-Chief Medical Officer to appoint someone against a post *de-hors* the rules or guidelines contrary to the constitutional requirements under Articles 14 and 16 of the Constitution of India. The very initial appointment of the petitioner was completely beyond jurisdiction being based on recommendation made by the political leaders only.

6. Learned counsel for the petitioner has relied on a Supreme Court decision in case of *Union of India and Ors. Vs. K.P. Tiwari*, reported in (2003) 9 SCC to contend that since the petitioner was allowed to continue for more than 25 years, a



compassionate approach may be taken by this Court exercising equitable jurisdiction. The said decision does not lay down any law having binding precedent for this Court to allow a completely illegal appointment to continue on the ground of continuance of the said employment for a long period of time. The decision in case of K.P. Tiwari (Supra) was rendered in the peculiar facts and circumstances of that case where the Supreme Court had refused to exercise inherent extra ordinary jurisdiction under Article 136 of the Constitution of India and to interfere with the order of the High Court. In the present case, the decision has been taken by the respondents themselves to undo something which is fundamentally illegal.

7. The decision in case of K.P. Tiwari (Supra) is of no help for the petitioner.

8. I do not find any reason to interfere with the impugned order. In the admitted facts and circumstances as noted above, this application has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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