

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.230 of 2018

In
Civil Writ Jurisdiction Case No.5254 of 2011

Vijay Kumar Sinha son of Late Sri Chhotelal, resident of Village- Kosanara, Post Office- Eksara, Police Station- Nalanda, District Nalanda, at present residing in the Campus of Blooming Roase Public High School, Transport, Kumhrar, Police Station- Patrakar Nagar, Patna- 800 026.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Chief Secretary, Government of Bihar, Patna.
3. The Regional Deputy Director, Health Services, Magadh Pramandal, Gaya.
4. The Civil Surgeon-cum- Chief Medical Officer, Nawada, District- Nawada.
5. The First Medical Officer-Incharge, Sadar Parkhand, Nawada, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. R.C. Pandey, Advocate Mr. Raj Nandan Prasad Singh, Advocate Mr. Amit Anand, Advocate
For the Respondent/s	:	Mr. Anil Kumar Verma, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 25-04-2019 Heard Shri Pandey, learned counsel for the appellant, and learned counsel for the State.

The appeal is directed against the judgment of the learned Single Judge dated 19th January, 2018 whereby the petition filed by the appellant was dismissed holding that the finding recorded by the One Man Committee that the appointment of the appellant was invalid is correct as the appointment had been made by an incompetent authority.



In short, the appointment had been made by the Regional Deputy Director, (Health), whereas the appointment ought to have been made by the Civil Surgeon-cum-Chief Medical Officer.

The learned Single Judge, therefore, came to the conclusion that the said finding recorded by the One Man Committee does not suffer from any infirmity and does not call for any interference.

Learned counsel for the appellant has urged that this was a question of law and not a question of fact and, if the Regional Deputy Director, (Health), had appointed the appellant and transferred him after one month, he could have been reverted back instead of his services having been treated to be invalid.

We have also gone through the records of the writ petition wherein a counter affidavit was filed on behalf of the respondent-State. Paragraph-5 of the said counter affidavit is extracted hereinunder:

“That with regard to the statement made in paragraph no. 4 of the writ petition, it is submitted that the petitioner has not disclosed as to how his appointment is legal and tenable in law as required to be given in compliance of Hon’ble Court’s order that it is stated that



on 12.03.1987 the petitioner was appointed directly on the post of Health Service Class-IV by the then Regional Deputy Director Health Services, Gaya. But in instant case advertisement was not published in any newspaper candidate had not gone through any selection process, roaster clearance was not taken from the competent authority and the petitioner was directly appointed illegally by the then R.D.D, Gaya."

No reply in rebuttal was given before the learned Single Judge to the aforesaid paragraph.

The litigative history of this case is that it came up before this Court on several occasions and by the ultimate order of this Court, a One Man Committee was appointed to look into the validity of such claims. The entire history need not be reproduced which has been stated in the writ petition and which is not disputed. The fact remains that the appointment of the appellant had not been made after following the due process including the issuance of any advertisement. It is, by now, well settled by the Apex Court that any appointment on any governmental post without advertisement will be void. The fact that the appointment of the appellant apart from being that by an incompetent authority was also without issuing any advertisement.



Consequently, the claim of the appellant cannot be accepted.

The appeal lacks merits and is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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