

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.30 of 2020

In
Civil Writ Jurisdiction Case No.17179 of 2019

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Ganga Devi wife of Rajendra Sah Resident of Ward No.3 Janjharpur R.S.
Navtol Purni Pokhar Behat South P.S. and District- Madhubani

... .. Appellant/s

Versus

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

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG 9
Mrs. Shama Sinha, AC to AAG 9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 11-07-2022

Heard learned counsels for the parties.

2. In the instant appeal, appellant has questioned the validity of the order of learned Single Judge dated 21.10.2019 passed in C.W.J.C. No. 17179 of 2019. The appellant was appointed to the post of Lady Ward Attendant *vide* order dated 29.07.1995 in the pay scale of Rs. 775-12-955-1125 by the Civil Surgeon-cum-Medical Officer on the recommendation of the then



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

3. The respondents notice illegalities in the appointment of appellant and proceeded to terminate the services of the appellant on 28.06.2019 and it was communicated to the appellant on 03.07.2019. Feeling aggrieved and dissatisfied with the order of termination, appellant preferred C.W.J.C No. 17179 of 2019. On 21.10.2019, learned Single Judge dismiss the petition, thus petitioner has presented this appeal.

4. Learned counsel for the appellant vehemently submitted that having regard to the length of service rendered by the appellant, termination after a lapse of two and a half decades is not proper. The learned Single Judge has not appreciated the aforesaid issue while rejecting the petition. Therefore, the appellant has presented this appeal to examine the raking up of belated issue in respect of appointment order dated 29.07.1995 and termination is illegal and arbitrary.

5. Heard learned counsel for the appellant.

6. Undisputed facts are that appellant was appointed to the post of Lady Ward Attendant on 29.07.1995 at the behest of politicians namely the then Hon'ble Deputy Minister, Water Resource Department and the Hon'ble Chief Minister of Bihar



which compelled the Civil Surgeon-cum-Medical Officer to appoint appellant on 29.07.1995 to the post of Lady Ward Attendant. Such appointment to a public post is without resorting to Article 14 and 16 read with relevant Rules in respect of filling up of Lady Ward Attendant in the Health Department. The learned Single Judge has taken note of in paragraph Nos. 5 and 6 of the order related to violation of Article 14 and 16 and so also considered Apex Court decision in the case of ***Union of India and Others vs. K.P. Tiwari*** reported in (2003) 9 SCC.

7. The appellant's contention that belatedly raking up of the issue of illegal appointment order dated 29.07.1995 in the year 2019 is not appropriate cannot be appreciated for the reasons that Apex Court in the case of ***M.S. Patil (Dr.) vs. Gulbarga University and Others*** reported in (2010) 10 SCC 63, paragraph 16 to 20 held as under

“16. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr Patil, learned Senior Counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as Lecturer and from where he had resigned to join to this post.

17. We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the



gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.

18. The matter can also be looked at from a slightly different angle. It is noted above how the appellant was able to secure the appointment and how he managed to continue on the post. By notification dated 13-8-2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad hoc basis until the appointment of the new incumbent to the post. His position is, thus, only ad hoc till the appointment of the new incumbent and in that position he is continuing on the basis of the direction of this Court to maintain status quo. We see no reason to continue this ad hoc arrangement any further and we do not wish to stand any longer in the way of the post being filled up on a regular basis.

19. Since the matter has become very old, it would not be reasonable for the University to fill up the post on the basis of the notification issued in the year 1993. The University may, therefore, issue a fresh notification to fill up the post. The process of selection and appointment on the basis of the fresh notification should be completed within six months from today.

20. In the result, the appeal is dismissed with costs, quantified at Rs. 50,000 (Rupees fifty thousand only)."

8. In the above decision there was a delay of 17 years in interfering with the order of appointment to the post of Reader. That apart, Apex Court in the case of *Renu and Others vs.*



District and Sessions Judge, Tis Hazari Courts, Delhi and Another reported in (2014) 14 SCC 50 elaborately discussed in respect of public employment that invariably Article 14 and 16 is required to be invoked for the purpose of any public post. Paragraph No. 35 of Apex Court decision in the case of *Renu and Others vs. District and Sessions Judge, Tis Hazari Courts, Delhi and Another* reported in (2014) 14 SCC 50 reads as under:

“35. In view of the above, the appeal stands disposed of with the following directions:

35.1. (i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

35.2. (ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post or the person occupying it.

35.3. (iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. *Employment News*, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab



initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without advertisement e.g. appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

35.4. (iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis.

35.5. (v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism.”

9. In the light of the aforesaid decisions of the Apex Court, the contention of the appellant that appellant has worked for 25 years, therefore, illegal appointment issued on 29.07.1995 cannot be interfered in the year 2019 while terminating services of the appellant cannot be appreciated.



10. Accordingly, the present appeal stands rejected while affirming the order of the learned Single Judge dated 21.10.2019 passed in C.W.J.C. No. 17179 of 2019.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
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