

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9563 of 2020

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Kamlesh Kumar, Son of Late Kishori Rai, Resident of Bangao N. Ward No. 1,
P.S. Bajpatti, District Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Health and Family Welfare Department, Government of Bihar, Patna.
2. The Regional Director/Deputy Director, Health Services, Government of Bihar, Patna.
3. The Collector, Sitamarhi.
4. The Civil Surgeon-cum-Member Secretary, District Health Committee, Sitamarhi.
5. The Superintendent, Sadar Hospital, Sitamarhi.
6. The Deputy Superintendent, Sadar Hospital, Sitamarhi.
7. The Medical Officer In-Charge, Primary Health Center, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Advocate
		Mr. Ansul, Advocate
For the Respondent/s	:	Mr. Birju Prasad, GP-13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 03-02-2022

This matter is heard via video conferencing due to
circumstances prevailing on account of COVID-19 Pandemic.

2. Heard learned counsel for the parties.

3. In the instant petition, the petitioner has prayed for the
following reliefs:

“A. A writ in the nature of MANDAMUS or any other
appropriate writ/s, order/s directing and commanding
the Respondent Authorities:-

i. To consider the case of the petitioner and direct the
respondent authorities to regularise the petitioner on



the post of Dresser at Bajpatti, Sitamarhi wherein 8 of the said posts are lying vacant since a very long time, keeping in mind the fact that the petitioner holds the requisite educational qualification and experience to be appointed on the said post and also the fact that he has been additionally doing the work of a Dresser in addition to carrying out the work of Emergency Medical Technician at Bajpatti, Sitamarhi.

ii. To further hold that the petitioner holds the requisite educational qualification and also holds an extensive work experience, having been given the additional charge of the post of Dresser.

B. Any other writ/s, order/s and direction/s as the Hon'ble Court deems fit and necessary."

4. For issuance of a writ of Mandamus one must satisfy two ingredients, namely, establishing statutory/legal right followed by demand before the competent authority. Both the ingredients are not forthcoming from the pleadings.

5. Therefore, the writ petition stands dismissed in the light of the Apex Court decision in the case of ***Mani Subrat Jain V. State of Haryana & Ors.***, reported in ***(1977) 1 SCC 486***. Para 9 reads as under:

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be



aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198."

6. Dismissal of the present writ petition would not come in the way of petitioner, submitting a detailed representation along with the service particulars to the competent authority within a period of eight weeks' from today.

7. The competent authority is hereby directed to decide the petitioner's representation/appeal at the earliest in passing speaking order.

(P. B. Bajanthri, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.02.2022
Transmission Date	NA

