

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17759 of 2024

1. Archana Kumari Daughter of Naval Kishore Lal Resident of village- Tarar, P.O. and P.S. Tarari, District Aurangabad, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
2. Daizy Rani, wife of Satyanarayan Gupta, Resident of near Satyendra Narayan High School, Ekangar Dih, P.S. Ekangarsarai, District Nalanda at Biharsharif, presently posted as General Nurse Midwifery Grade-A, Nalanda Medical College and Hospital, Patna.
3. Sunita Sinha, wife of Dhananjay Kumar, (female), aged about- 41 years, resident of Shree Krishnapuri, Tikuliper Kangi General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
4. Indrawati Kumari, wife of Vikash Kumar, Resident of village- Nirakhpur, P.S. Paliganj, District Nalanda at Biharsharif, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
5. Archana Kumari, wife of Jitendra Kumar, Resident of Chinta Niketan, Road No.3, North of Kumharar Gumati Sandalpur Road, Vikash Nagar, P.S. Bahadurpur, District - Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
6. Kalpana Kumari, wife of Abhay Kumar, Resident of village- Chakdaulat, P.O. Chandhari, P.S. Islampur, District - Nalanda at Biharsharif, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
7. Priti Sadhana, daughter of Umashanker Patel Resident of village Dharampur, P.S. Noorsarai, District - Nalanda at Biharsharif, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
8. Priyanka Kumari, daughter of Rambriksh Prasad, Resident of village- Madhopur Dih, P.O. Madhopur, District - Nalanda at Biharsharif, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
9. Priti Kumari, wife of Piyush Lal, Resident of Flat No.105, Tribhuwan Complex, Doctors Colony, P.O. Gulzarbagh, District - Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
10. Babita Kumari, wife of Binod Kumar Rajak, Resident of Canara Bank Ke Samne Road Me Nayachak (Khemani Chak), Manoharpur Kachhuara, P.S. Ram Krishna Nagar, District Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
11. Priyanka, wife of Suman Kumar Tiwari, Resident of village- Karanpura, Murka, P.S. Paliganj, District - Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
12. Abha Kumari, wife of Mahendra Sharma, Resident of House No.35, Maa Jagdamba Colony, P.O. Jaganpura, P.S. Ram Krishna Nagar, District - Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
13. Karuna Kumari, wife of Ram Shankar Singh, Resident of Mohalla- Indush,



P.O. and P.S. Jamalpur, District - Munger, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.

14. Sunita Kumari, wife of Late Jagat Ram Singh, Resident of village and P.O. Ramdiri (Ramnagar) P.O. and P.S. Begusarai, District Begusarai, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.
15. Ranjana Kumari, wife of Raj Kumar Prasad, Resident of Gandhi Setu Colony, Biscomaun, P.S. Alamganj, District Patna, presently posted as General Nurse Midwifery, Grade-A, Nalanda Medical College and Hospital, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Director- in- Chief (Nursing), Directorate of Health Services, Government of Bihar, Patna.
5. The Superintendent, Nalanda Medical College and Hospital, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam, Advocate
Mr. Awnish Kumar, Advocate
For the Respondent/s : AC to AG

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-11-2024

Heard Mr. S. B. K. Manglam, learned counsel
appearing on behalf of the petitioner and learned AC to learned
AG for the State.

2. Petitioners have *inter alia* prayed for following
reliefs in the paragraphs No.1 of the writ petition:-

“(I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to consider the petitioners’ case for their promotion to the post of Ward Sister Nursing Sister in the pay-scale prescribed for the post i.e. Pay Level-8



on the ground that if the Respondents have considered the cases of other similary situated General Nurse Midwifery Grade-A and Staff Nurse Grade- A for their temporaty officiating charge of the post but with prescribed pay-scale, the petitioners are also entitled to be considered for such promotion with effect from the same date when they have considered the case of juniors to the petitioners without considering the case of petitioners, who were admittedly senior to them.

(ii) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondents Authorities for grant of benefit of pay-scale and the post for all future benefits to the petitioners also with effect from the date since when the Respondents have given the post and pay-scale to other General Nurse Midwifery ignoring the cases of the petitioners.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

Brief Facts: -

3. The brief facts of the case are that the petitioners were appointed at the post of General Nurse Midwifery on contractual basis since a long time and after much persuasion between May and July, 2015, the petitioners had joined against the sanctioned and vacant post of General Nurse Midwifery on regular basis. The department of Health on 20.05.2020, published a provisional gradation list containing the names of 4991 Staff Nurse Grade- A. Thereafter, the respondent no.2, the Deputy Secretary, Department of Health, Government of Bihar issued a letter contained in Memo No.1600 dated 16.10.2023, addressed to the Head of different Institution/Hospital for



forwarding necessary information in Form-I about all the working staff Nurse Grade-A. The petitioners are aggrieved by the subsequent development taken on the basis of the information, as contained in Annexure 2, altogether 505 General Nurse Midwifery Grade- A were given officiating posting against the post of ward sister/Nursing Sister in prescribed pay scale for the said post (Annexure 3), out of them many of them were those General Nurse Midwifery, who have allegedly joined their services much after the petitioners and, as such, a case of discrimination has been made out by the petitioners. Aggrieved by the same, petitioners have claimed in the present writ petition that they are also entitled to be considered for the *ad hoc* promotion at least from the date the juniors to the petitioners have been promoted on *ad hoc* basis in pay level 8.

Submissions: -

4. The learned counsel appearing on behalf of the petitioners submitted that the petitioners were appointed on the post of General Nurse Midwifery on contractual basis and after interference of this Court, the petitioners were regularized in their services. Learned counsel further submitted that some of the persons, whose name reflected in provisional gradation list



have been promoted on *ad hoc* basis, considering "Temporary Substitute Executive Arrangement Rules, 2023" (hereinafter referred to as the "Rules, 2023"), which is in violation of Articles 14 and 16 of the Constitution of India. He further submitted that even the governing rule of 2023, does not authorize the respondents to adopt discriminatory attitude for granting of officiating charge to a junior leaving behind their senior in their old rank and pay scale. The petitioners are also entitled for similar treatment in accordance with law.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that in view of the stay granted in SLP No.29770 of 2015 (**the State of Bihar Vs. Sushil Kumar Singh & Ors.**), no regular promotion in compliance of the direction of the Apex Court is being given to any of the government employee in the State of Bihar. The Government had no alternative than to frame the Rules, 2023 in view of working arrangement on administrative ground to run the government with good and efficient hand of officers. The very objective of Rules, 2023 is temporary till the final order of Apex Court is passed in the case of **Sushil Kumar Singh (Supra)**. The Rules, 2023 was the subject matter of challenge in **S.L.P. No.8121 of 2024 (Ashok Kumar Chaudhary & Ors. Vs. the State of**



Bihar & Ors.), in which no stay has been granted, as a result, government action for granting ad hoc promotion on temporary basis in no manner can be said to be affecting the right of the petitioners, being discriminatory in nature by giving promotion on *ad hoc* basis to the most efficient and competent persons.

Analysis and Conclusion: -

6. The Petitioners are aggrieved by the alleged discrimination made against them because some of the persons, whose name reflected in provisional gradation list have been promoted on *ad hoc* basis, considering Rules, 2023 in view of working arrangement on administrative grounds to run the government with good and efficient hand of officers. The very objective of the Rules, 2023 is temporary till the final order of Apex Court in **S.L.P. No.29770 of 2015 (the State of Bihar Vs. Sushil Kumar Singh & Ors.)** and **S.L.P. No.8121 of 2024 (Ashok Kumar Chaudhary & Ors. Vs. the State of Bihar & Ors.)** and in no manner, such temporary arrangement will affect service condition of the petitioners or any affected parties till the Apex Court takes the final decision in the matter.

7. The Supreme Court in case of **State of Punjab V. Arun Kumar Aggarwal (2007) 10 SCC 402** held that asking an officer holding substantively lower post to discharge the



duties of higher post cannot be treated as promotion and such person continues to hold the substantive lower post and only discharges the duties of higher post essentially as stop gap arrangement; that no right accrues from the same. Similarly, in the case of **State of Harayna v. S.M. Sharma 1993 Supp (3) SCC 252**, the judgment of the High Court reading the order of giving current duty charge as an order of promotion was set aside. Yet again in case of **Sreedam Chandra Ghosh V. State of Assam (1996) 10 SCC 567**, wherein it has been held that officiation in a higher post confers no right to the post.

8. The *ad hoc* promotion don't confer any right for regular promotion, therefore, question of discrimination does not arise. For this reason also, the present writ petition is not maintainable.

9. At this stage, learned counsel tried to satisfy this Court by referring paragraph no.15 of the writ petition in support that discrimination has been made with other employee, whose name figures in the provisional gradation list, which is reproduced hereinafter:-

“15. That, the candidate at serial no.939 of provisional Gradation List is Kumari Sudha, who was appointed as Staff Nurse- Grade- A vide letter dated 13.06.2015 issued under memo no.1556 dated 13.06.2015 however in the provisional Gradation List her date of joining has been shown as 19.05.2015 i.e. the said Kumari Sudha had joined her service on 19.05.2015 even before her appointment.”



10. I don't find any case of discrimination can be called for the reason that the Government in public interest in exercise of its power has every right to select the most efficient employee for running the government, pending Departmental Promotion Committee (D.P.C.) before giving regular promotion in compliance of the stay granted by the Apex Court for regular promotion in case of **Sushil Kumar Singh (Supra)**.

11. I find that in no manner the petitioners can be held that they have been discriminated also considering the fact that the *ad hoc* promotion on officiating basis for running the government has been done after selecting the most efficient candidates whose name is contained in Form- I (Annexure 2) and the petitioners knowingly had not challenged the Form 1 at the relevant time. I again reiterate that it is up to the Government to run the government by selecting the efficient government officials. Secondly, till date no final gradation list has been prepared therefore, unless *inter se* seniority is established, I don't find the petitioners have made out a case of discrimination.

12. The writ petition is also otherwise not maintainable in view of the fact that all the petitioners have not



given their service particulars to ascertain their efficiency and suitability giving details in respect of their leave or any departmental inquiry pending against them and the same can only be said to be forgoes officiating promotion of their own volition to that scale or grade, then certainly as per the prescribed rules, the officer next junior to them becomes entitled for officiating promotion and the pay applicable to the said post. In this regard, I find it apt to reproduce para no. 6 of the judgment passed by the Apex Court in the case of **Bharat Singh & Ors. vs State of Haryana & Ors.** reported in **1988 (4) SCC 534**, which is, inter alia, reproduced herein after:

“6. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid



of any merit.”

13. The writ petition don’t call for any interference in
absence of any pleadings on these ground also.

14. The writ petition is, accordingly, dismissed.

15. There shall be no order as to costs.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.11.2024
Transmission Date	NA

