IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22654 of 2011

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Shamsher Singh Awadhwale, Son of Late Shyam Sundar Sinha, Resident of Village- Bheria, P.S. Chandi, District-Nalanda

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
2. Director-in-Chief, Department of Health And Family Welfare, Govt. of Bihar, Patna
3. Deputy Director, Department, of Health And Family Welfare, Govt. of Bihar, Patna.
4. Civil Surgeon cum Chief Medical Officer, Nalanda At Biharsharif.
5. In-charge Officer, District Tuberculosis Centre, Nalanda At Biharsharif.
6. District Provident Fund Officer, Nalanda At Biharsharif.
7. District Treasury Officer, Nalanda At Biharsharif.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha, AAG-15

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 07-10-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for the following reliefs :-

> *"1. (i) To accept the joining of the petitioner with effect from 23.03.2000 the date on which persons below in merit list than petitioner have been appointed.*
>
> *(ii) And for further commanding the respondents to fix the seniority of the petitioner as per the merit list and to grant all notional benefits of continuous service which have been made*

available to the candidates appointed from the merit list occupying just below the same petitioner.

(iii) And for further direction to the respondents to pay full salary with effect from 30.04.2007 (date of disposal of C.W.J.C. No. 11497 of 2005 filed by the petitioner) after taking into account the benefit accruing to him notionally till 29.04.2007 and to pay interest therein at the rate of six percent on dues amount with effect from 30.04.2007 till the date of appointment.

(iv) And for further direction to the respondents to pay entire arrear of salary after granting notional benefits treating the date of appointment 23.03.2000.

(v) And for further commanding the respondent to provide old pension scheme in place of contributory pension plan (C.P.P.) since other appointees placed below in the merit list have been provided old pension scheme."

3. The case of the petitioner in brief is that in compliance of the order dated 16.12.1996 passed in Civil Appeal no.10758-59 of 1996 by the Hon'ble Supreme Court directing the State Government to recruit persons on sanctioned posts of Grade-III and IV under the T.B. Control Programme, the respondents came out with Employment Notice no.1/97 which was published in the daily newspaper on 5.5.1997 for appointment on 148 posts of T.B. Health Visitor. On the petitioner having applied, the names of both the petitioner as

also one Manjit Kumar were recommended by the Bihar Public Service Commission (‘BPSC’ in short) on 20.8.1999. In the merit list, the names of the Manjit Kumar and the petitioner were at Serial nos. 2 and 13.

4. It is the case of the petitioner that while the candidates whose names figured below the name of the petitioner in the merit list were appointed vide order dated 23.3.2000, the petitioner was denied the appointment.

5. After a series of litigations, including CWJC no.11497 of 2005 filed by the petitioner having been allowed by order dated 30.4.2007 and Civil Review no.213 of 2007 filed by the State of Bihar having been dismissed by order dated 18.4.2009, the petitioner was finally appointed on 27.8.2009.

6. It is further submitted that CWJC no.7441 of 2000 was preferred by Manjit Kumar which was allowed and the respondents were directed to appoint him on the post of Health Visitor. The State of Bihar preferred LPA no.326 of 2009 which was disposed of by order dated 7.7.2009 holding that the petitioner therein (Manjit Kumar) shall be entitled for salary with effect from the date of disposal of the writ petition and that he shall be entitled for seniority and shall rank just next to the person above him in the merit list.

7. It is thus submitted by learned counsel for the petitioner that the case of the petitioner standing on a similar footing to that of Manjit Kumar, he should also be granted reliefs in similar terms.

8. Learned counsel for the respondents submitted that the petitioner was appointed on 27.8.2009 on the post of Health Visitor in terms of the directions of this Court. He is working in the said capacity and has been getting regular salary. So far as prayer of the petitioner to treat his service with effect from 23.3.2000 and to pay salary from 29.4.2007 along with interest as in the case of Manjit Kumar is concerned, it is submitted that Manjit Kumar had been given the benefits as a result of the directions of this Court contained in order dated 7.7.2009. There is no such direction so far as the petitioner is concerned. As such he is not entitled for the said relief.

9. Heard learned counsel for the parties and perused the materials on record.

10. The relevant facts in brief are that the respondents having come out with Employment Notice no.1/97 in the daily newspaper on 5.5.1997 for appointment on 148 posts of T.B. Health Visitor, the petitioner as also Manjit Kumar applied. In the merit-wise list of the recommended candidates prepared by

the BPSC, as contained in Annexure-4 to the writ application, the name of the petitioner figured at Serial no.13 and that of Manjit Kumar at Serial no.2.

11. Inspite of the recommendation of the BPSC, it transpires that the petitioner was not appointed which led to the petitioner and others filing CWJC no.142 of 2003 for a direction to the respondents to appoint them on the post of Health Visitor pursuant to Advertisement no.1/97. The same was disposed of by order dated 4.4.2003 directing the respondents to take a final decision on the claim of the petitioner within a period of 2 months.

12. Non compliance of the directions contained in order dated 4.4.2003 led the petitioner to file MJC no.2097 of 2003. During pendency of the contempt application, the respondents came out with a resolution dated 9.12.2003 adding a new condition in the terms and conditions of the advertisement which was to the effect that ‘no candidate trained from a non Government institution will be appointed on the post of Health Visitor’.

13. The petitioner challenged the imposition of the new condition by filing CWJC no.11497 of 2005 which was allowed, the additional condition imposed by resolution dated

9.12.2003 was quashed and the respondents were directed to consider the case of the petitioner for appointment expeditiously within a period of 2 months.

14. The State of Bihar preferred a review application being Civil Review no.213 of 2007 against the order dated 30.4.2007 passed in CWJC no.11497 of 2005. The review application was dismissed by order dated 18.4.2009.

15. It is to be noted here that it was only after dismissal of the review application that the petitioner was appointed on 27.8.2009.

16. So far as the case of Manjit Kumar is concerned, this Court by its order dated 24.10.2008 passed in CWJC no.7441 of 2000 had directed the State Government to appoint the petitioner therein on the post of Health Visitor. The said order was challenged by the State of Bihar in LPA no.326 of 2009 which came to be disposed of on 7.7.2009, the relevant part of which is quoted herein below for ready reference :-

> *"11. The next question which arises for consideration is as to the relief admissible to the petitioner. The learned Single Judge has directed for the petitioner's appointment, but has denied to the petitioner salary for the past period, but has given notional benefits. We are of the view that the same needs modification in the interest of justice, even though the writ petitioner has not preferred*

appeal. The petitioner shall be entitled to the salary with effect from the date of disposal of the writ petition, inter alia, for the reason that, we are clearly of the view that the present appeal is wholly unjustified and unmerited, causing clearly avoidable harassment to the petitioner, and has burdened this Court with a most unwanted matter.

12. In the result, the order of the learned Single Judge is upheld with the modification that the writ petitioner shall be entitled with effect from 25.3.2000 (Annexure-6), the date on which the notification appointing others including those junior to the petitioner, was issued. He shall be entitled to his seniority and shall rank just next to the person above him in the merit list. He shall accordingly be entitled to computation of salary notionally and computation of actual money benefit with effect from 24.10.2008. He shall also be entitled to full salary with effect from 24.10.2008, after taking into account the benefit accruing to him nationally till 23.10.2008."

17. As held in the case of Manjit Kumar, the case of the petitioner standing on a similar footing and appointments having been made from the same merit-wise recommendation list of the BPSC wherein the names of both the petitioner and Manjit Kumar figured, the Court is of the opinion that the application of the petitioner is fit to be allowed and the same is allowed.

18. The petitioner shall be entitled for appointment with effect from 23.3.2000, the date on which persons below in the merit list than the petitioner have been appointed with all the notional benefits. He shall be entitled for salary from 30.4.2007 i.e. the date of order in CWJC no.11497 of 2005 filed by him till the date of joining i.e. 2.9.2009 which shall be paid to him within a period of 3 months.

19. The salary for this period shall be paid taking into account the benefit accruing to him notionally till 29.4.2007.

20. The petitioner shall also be entitled for Old Pension Scheme in place of Contributory Pension Plan as given to appointees whose position was lower than that of the petitioner in the merit list.

21. The writ application stands allowed with the above observations and directions.

(Partha Sarthy, J)

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CAV DATE	N/A
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