

GIA 2
24/8/13

IN THE HIGH COURT OF JUDICATURE AT PATNA
(Civil Writ Jurisdiction)

C.W.J.C. No..... of 2013

Budhni Devi.....Petitioner

Versus

The State of Bihar & Others.....Respondents

Sub-Selection Matter(Non-Gazetted), Health Department

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SYNOPSIS

The petitioner namely Budhani Devi has come before Hon'ble High Court seeking direction for appointment on the post of Mamta(class IV worker) in the Primary Health Center, Bihariganj. The petitioner also prayed to cancel the selection list for appointment for the post of Mamta, which have been prepared by the Medical Officer-in-charge, Primary Health Center, Bihariganj. The petitioner belongs to harijan by caste. She had applied earlier for the advertised post of Mamta under Primary Health Center, Bihariganj. The petitioner has fulfilled all the essential requirement for the said post but her application has not been entertained. One of the criteria of this post is this, that the candidate should resided under the radius of 5 K.M. from the state dispensary but the Medical Officer, Primary Health Center, Bihariganj, Madhepura has committed irregularity in respect to preparation of final selection list for the post of mamta. The petitioner's residence is only two hundred yards from the state dispensary and she

belongs to harijan by caste and also resides under Bihariganj block. But from the selection list it appears that some candidates, who have not fulfilled the criteria of the said post have been appointed. The petitioner has come to know about the aforesaid fact from RTI. The petitioner also has filed representation in this respect. But no steps have been taken.

Hence this writ petition is being filed.

Following documents are being annexed with this petition:-

1. Bio-Data of the Petitioner.
2. 14-07-2012:- The information given by the medical officer in respect to the selected mamta from RTI.
3. 15-05-2012:- A representation filed by the petitioner.
4. 14-11-2012:- A representation to D.M., Madhepura.
5. 12-01-2013:- A representation to D.M., Madhepura.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No..... of 2013

In the matter of an application

under Article 226 of the
constitution of India;

And

In the matter of :

Budhni Devi, W/o Shobha Nand Ram, R/o Village:- Hathiodha, Tola:- Barahya,

Ward No. 2, P.O:- Bihariganj, P.S:- Bihariganj, Distt:- Madhepura.

.....Petitioner

Versus

1. The State of Bihar.

2. The D.M., Madhepura.

3. The Medical Officer, Primary Health Center, Bihariganj, Madhepura.

4. Sanjo Devi, W/o Dhirender Ram, R/o Vill:- Madhuban, Udakisunganj Block,
Distt:- Madhepura.

5. Lalita Kumari, W/o Tanranti Ram, R/o Vill:- Madhuban, Udakisunganj Block,
Distt:- Madhepura.

6. Lalita Devi, W/o Laxman Ram, R/o Vill:- Madhukar Chak, Bihariganj Block,
Distt:- Madhepura.

7. Suro Devi, W/o Hira Ram, R/o Vill:- Pakilpur, Bihariganj Block, Distt:-
Madhepura.

8. Mira Devi, W/o Tuno Ram, R/o Vill:- Madhukar Chak, Bihariganj Block,
Distt:- Madhepura.

9. Sita Devi, W/o Chaudhary Ram, R/o Vill:- Mohanpur Nissaf, Bihariganj
Block, Distt:- Madhepura.

.....Respondents

To,

The Hon'ble Justice Ms. Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and his companion Justice of the said Hon'ble Court.

The humble petition on behalf of petitioner above named.

Most respectfully sheweth:-

1. That, the petitioner seek indulgence of this Hon'ble Court under article 226 of the constitution of India for the following reliefs:-

- i) For issuance of a writ of or in the nature of writ of Mandamus directing the respondents concerned to consider the appointment of the petitioner ^{for} ~~from~~ the post of worker at primary health center, Bihariganj because she has

fulfilled all the requirements whatever it had been required.

- II) For issuance of a writ of or in the nature of writ of Mandamus directing the respondents concerned to consider the representation filed by the petitioner in respect to her selection on the post of worker (class IV staff) ^{"Mamta"}.
- III) For issuance of a writ of or in the nature of writ of Mandamus directing the respondent no.2 to consider the appointment of the petitioner on the post of Mamta (worker class IV), because some other worker is going to be appointed on the said post, while they had not

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fulfilled all the requirements for the above noted post, whatever there may be.

- IV) For issuance of a writ of or in the nature of writ of certiorari to set aside the panel of mamta under Primary Health Center, Biharigani prepared by the Medical officer-in-charge, Primary Health Center, Bihariganj and direction may kindly be given to prepare a fresh panel of mamta as per rules and regulations of appointment of the said post.
- V) For any other appropriate writ/writs, order/orders, command/commands, direction/directions, which your Lordships may deem fit and proper on the facts and circumstances of the case.

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2. That, the petitioner has not filed any application or writ application before this Hon'ble High Court earlier in this matter.

3. That, the aforesaid reliefs are being sought for on the following grounds:-

I) For that, non-consideration of the representation filed by the petitioner in respect to appointment of mamta, is quite improper in the eye of law.

II) For that, the medical officer-in-charge, Primary Health Center, Bihariganj without following the rules and regulations in respect to appointment of mamta has prepared final panel list, which is quite improper in the eye of law.

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III) For that, the medical officer-in-charge, Primary Health Center, Bihariganj has wrongly selected Sanjo Devi as well as Lalita Kumari for the post of mamta because both of them belong to other blocks and their residence is also far-far away from the primary health center, Bihariganj. This fact will be apparent from the selection list itself. Thus this action of the respondents concerned is against the principal of natural justice.

IV) For that, other grounds will be taken up at the time of final argument of this case.

4. That, the petitioner is citizen of India and is residing within the territorial jurisdiction of the Hon'ble High Court.

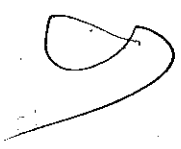
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5. That, applications for some posts of Mamta (worker class IV) at Bihariganj Primary Health Center, Madhepura was called for from the candidates. It has also come that the candidates should file their full bio-data along with photograph and required certificates.

6. That, the petitioner as per advertisement had given full details along with all testimonials and submitted the format before the respondents concerned.

A photocopy of bio-data of the petitioner is annexed herewith and marked as annexure 1 which forms part of the petition.

7. That, the medical officer-in-charge, Primary Health Center, Bihariganj-vide his letter no. 262 dated 14-07-2012 had sent detail about the selection list of the selected Mamta because the



petitioner had filed an application before the RTI for getting the said information.

8. That, it is a matter of great surprise that name of the petitioner was not been stated in the selection list of the aforesaid post. The medical officer has given full details about the selected Mamta and also he has stated the distance of the residence of selected mamta from the primary health center.

A photocopy of the information given by the medical officer in respect to the selected mamta is annexed herewith and marked as annexure 2 which forms part of the petition.

9. That, it is apparent from the selection list of mamta that the

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distance of the residence of Sanju Devi from the primary health center is 8 K.M., likewise the distance of the residence of Lalita Kumari from the Primary Health Center is about 8 K.M. and like wise the distance of the residence of Suro Devi from the Primary Health Center is about 6 K.M., while the distance of the residence of the petitioner from the primary health center is only 200 yards. In spite of that she has not been selected for the post of mamta. The main criteria for the appointment of mamta was distance from the residence of the candidate to primary health center.

- 10
10. That, it shows that the medical officer, Primary Health Center, Bihariganj has committed irregularities in appointment procedure for the post of mamta in his health center. The petitioner as per advertisement has fulfilled all the requirements, whatever demanded. In spite of that the petitioner has not been appointed. It

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AD

is also relevant to mention herewith that the selected mamta namely Sanjo Devi as well as Lalita Kumari are resident of Udakishonganj Block, which is far-far away from Bihariganj Block.

11. That, it is also relevant to mention herewith that the said post was only for the candidates, who are the residence of Bihariganj Block only. The resident of other block is not entitled for the said post but the medical officer has crossed his jurisdiction and appointed two outsiders on the above noted post.

12. That, the petitioner has filed representation on 15-05-2012, before the District Health Committee, Madhepura and has stated irregularities committed by the medical officer in appointment of mamta. But no steps have been taken by the respondents concerned yet.

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A typed copy of representation dated 15-05-2012 filed by the petitioner is annexed herewith and marked as annexure 3 which forms part of the petition.

13. That, the petitioner has also filed an application before the D.M., Madhepura on 14-11-2012 in respect to irregularities committed by the medical officer, Bihariganj in appointment of mamta. But the D.M., Madhepura has not steps in this respect.

A typed copy of representation dated 14-11-2012 to D.M., Madhepura is annexed herewith and marked as annexure 4 which forms part of the petition.

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14. That, later on the petitioner has filed last representation on 12-01-13 for redressal of her grievances. She also stated in his representation to cancel the panel list of mamta and prepare a fresh list according to the rule and regulation. But all the efforts of the petitioner have been failed.

A typed copy of representation dated 12-01-2013 is annexed herewith and marked as annexure 5 which forms part of the petition.

15. That, from above facts and circumstances, it is apparent that the medical officer-in-charge, Primary Health Center, Bihariganj has committed irregularity in preparing the final panel list of the mamta. That list should be cancelled.

~~14~~ 13 14

16. That, in the circumstances, the petitioner has no other alternative of efficacious remedy than to move before the Hon'ble High Court and the reliefs prayed herein if granted would afford him complete economical and speedy relief.

It is, therefore, humbly prayed that your Lordships may graciously be pleased to issue a rule NISI, for a writ of or in the nature of writ of mandamus calling upon the respondents to show cause as to why the reliefs prayed for in paragraph 1 of this petition be not granted.

And

Upon return of the writ and the rules and perusing such causes as may be

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shown and after hearing counsel for the
parties the writ and the rule be made
absolute.

And/or

Pass such other appropriate writ/writs
order/orders, command/commands,
direction/directions which your
lordships may deem fit and proper.

And for this petitioner shall ever pray.

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AFFIDAVIT

I, Budhni Devi, aged about 30 years, W/o Shobha Nand Ram, R/o Village:-
Hathiodha, Tola:- Barahya, Ward No. 2, P.O:- Bihariganj, P.S:- Bihariganj,
Distt:- Madhepura, do hereby solemnly affirm and states as follows:

1. That, I am petitioner in this case and as am well acquainted with the facts and circumstances of the case.
2. That, the contents of the petition and affidavit have been read explained to me in Hindi which are true to my knowledge.
3. That, the statement made in paragraph no.are true to my knowledge, those made in paragraph no. are true to my information derived from the records rests are by way of submission to this Hon'ble Court.
4. That the annexures are true copies of their originals.

जिला स्वास्थ्य समिति, मधेपुरा

बिहारीगंज में 'ममता' (स्वैच्छक कार्यकर्ता) के चयन हेतु आवेदन का प्रारूप

निम्न अस्पताल के लिए आवेदन दिया जा रहा है उसका

नाम प्राथमिक स्वास्थ्य केंद्र, बिहारीगंज (मधेपुरा)
 अस्पताल का नाम शुचनी देवी
 समर्थकों के पिता/पति का नाम श्री श्रीगोविन्द राय
 जन्म तिथि :- दिनांक 15 माह 10 वर्ष 1984

गलत
 द्वारा
 पासपे
 फोटो



दिनांक 10.11.2009 को आवेदक की उम्र :- वर्ष 26 माह 01 दिन 27

(प्रमाण-पत्र संलग्न करें)

पता :-

ग्राम बटैया पो. हथियाडीवा
 थाना बिहारीगंज प्रखण्ड बिहारीगंज
 जिला मधेपुरा

आवेदित अस्पताल से आवास की दूरी (5 किलोमीटर के अन्दर)

(आवासीय प्रमाण-पत्र संलग्न करें)

प्रश्व प्रशिक्षण संबंधी विवरण

(प्रमाण-पत्र संलग्न करें)

शैक्षणिक योग्यता (प्रमाण-पत्र संलग्न करें)

परीक्षा का नाम	संस्थान का नाम	उत्तीर्ण होने का वर्ष	प्राप्तांक	प्रतिशत
उपष्टम उत्तीर्ण	राजकीय मध्याधिका बिहारीगंज	31-12-97	राजकीय मध्याधिका	

जन्म (रविदास समुदाय) — नमर —

(प्रमाण-पत्र संलग्न करें)

घोषणा-पत्र

प्रमाणित किया जाता है कि मुझे अपना एक वर्ष उससे कम उम्र का बच्चा नहीं है। आवेदन पत्र में दी सभी सूचनाएँ सही हैं। उपरोक्त अंकित सूचना में किसी प्रकार की त्रुटि पाए जाने पर जिला स्वास्थ्य मधेपुरा आवेदन पत्र अस्वीकृत करने के साथ-साथ आवश्यक वैधानिक कार्रवाई कर सकती है, जिसमें किसी प्रकार की आपत्ति नहीं होगी।

बटैया

शुचनी देवी
 आवेदिका का हस्ताक्षर

Annex-2

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कार्यालय, प्रभारी चिकित्सा पदाधिकारी, प्रा० स्वा० केन्द्र, बिहारीगंज
पत्रांक.....२६९.....दिनांक.....१५/०७/१२

प्रेषित,

श्रीमती बुधनी देवी
पति श्री शोभानंद ^{राम} बेस
ग्रा०—बटैया, पो०—हथिऔंघा
प्रखंड—बिहारीगंज (मधेपुरा)

विषय :—सूचना अधिकार के तहत चयनित ममता की सूची भेजने के संबंध में ।

मु० चि० पदाधिकारी, मधेपुरा के पत्रांक 828 दिनांक 03/07/2012 के द्वारा इस संस्थान में चयनित ममता कार्यकर्ताओं की सूची आपको निबंधित डाक से भेजने का आदेश है, जो संकलित कर आपको भेजी जा रही है।

(प्रभारी चिकित्सा पदाधिकारी)
प्रा० स्वा० केन्द्र, बिहारीगंज

ज्ञापांक.....बिहारीगंज, दिनांक.....

प्रतिलिपि :— मु० चि० पदाधिकारी, मधेपुरा को उनके ज्ञापांक 828 दिनांक 03/07/2012 के कम में सूचनार्थ प्रेषित।

(प्रभारी चिकित्सा पदाधिकारी)
प्रा० स्वा० केन्द्र, बिहारीगंज

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क्र०सं०	ममता का नाम	पति / पति का नाम	स्थाई पता	वर्तमान पता	प्रा० स्था० केन्द्र से दुरी
1	संजो देवी	धीरेन्द्र राम	ग्राम--मधुबन, प्रखंड--उदाकिशुनगंज	ग्राम--मधुबन, प्रखंड--उदाकिशुनगंज	8 कि०मी०
2	मीरा देवी	टुनो राम	ग्राम--मधुकरचक, प्रखंड--बिहारीगंज	ग्राम--मधुकरचक, प्रखंड--बिहारीगंज	5 कि०मी०
3	ललिता कुमारी	तरंती राम	ग्राम--मधुबन, प्रखंड--उदाकिशुनगंज	ग्राम--मधुबन, प्रखंड--उदाकिशुनगंज	8 कि०मी०
4	सीता देवी	चौधरी राम	ग्राम--मोहनपुर निसफ, प्रखंड--बिहारीगंज	ग्राम--मोहनपुर निसफ, प्रखंड--बिहारीगंज	4 कि०मी०
5	ललिता देवी	लक्ष्मण राम	ग्राम--मधुकरचक, प्रखंड--बिहारीगंज	ग्राम--मधुकरचक, प्रखंड--बिहारीगंज	5 कि०मी०
6	सुरो देवी	हीरा राम	ग्राम--पकिलपुर, प्रखंड--बिहारीगंज	ग्राम--पकिलपुर, प्रखंड--बिहारीगंज	6 कि०मी०

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-3-

एनेक्सचर—

सेवा में,
जिला पदाधिकारी,
मधेपुरा ।

विषय :- प्राथमिक स्वास्थ्य केन्द्र बिहारीगंज में "ममता" की नियुक्ति में अनियमितता किए जाने के संबंध में ।

महाशय,

निवेदन पूर्वक कहना है कि प्राथमिक स्वा० केन्द्र, बिहारीगंज में "ममता" की नियुक्ति के लिए मैंने आवेदन की थी ।

किन्तु सारी वहीतारें पूरी करने के बावजूद मोटी रकम लेकर दूसरे आवेदक (आवेदक) की नियुक्ति की गई है । जबकि मैं स्वास्थ्य केन्द्र के बगल में रहती हूँ तथा मुझे प्रसव कराने की अनुभव है ।

अतः अनुरोध करना है कि मेरी शार्थना पर सहानुभूति पूर्वक विचार करते हुए मुझे गरीबों को नियोजित करने की कृपा की जाए ।

रिसिन्ड,
हठअस्पष्ट

विश्वास भाजिका,
हठ०- हुफ्ती देवी
ग्राम + पो० हथिखीघा,
टौला- बडैया घाट न०२,
धाना- बिहारीगंज
जिला- मधेपुरा ।

(4)

एनेक्सचर—

सेवा में,

माननीय जिला पदाधिकारी मधेपुरा,

मधेपुरा ।

विषय :- जिला स्वास्थ्य समिति मधेपुरा द्वारा बिहारीगंज में ममता (स्वैच्छिक कार्यकर्ता) के चयन में निर्धारित मापदंड से हटकर चयन करने के संबंध में ।

महोदय,

जिला स्वास्थ्य समिति मधेपुरा द्वारा बिहारीगंज में ममता (स्वैच्छिक कार्यकर्ता) के चयन के लिए आवेदन पत्र के क्रमांक 6 में आवेदक का निवास आवेदित अस्पताल से 5 कि० मी० के अन्दर होना मापदंड के रूप में बर्शाया गया। किन्तु ममता के चयन में इस मापदंड को दरकिनारा करते हुए रिश्कत के रूप में बतौर मोटी रकम लेकर चयन किया गया ।

इसका अन्दाजा आवेदिका बुधनी देवी पति शोभानन्द राम द्वारा मांगा गया सूचना के अधिकार के तहत भेजे गये सूचना से लगता है ।

प्रभारी चिकित्सा पदाधिकारी प्रा० स्वा० केन्द्र बिहारीगंज ने अपने पत्रांक 262, दिनांक 14-7-12 से जो सूचना भेजी है वह चीकने वाली है । सूचना के अनुसार प्रा० स्वा० केन्द्र बिहारीगंज में ह: ममता का चयन किया गया। जिनमें क्रमांक 1 एवं 03 (तीन) के चयनित ममता पूरै प्रखण्ड के निवासी हैं । और इनकी आवास की दूरी अस्पताल से 08 कि० मी० की है ।

क्रमांक 06 की चयनित ममता का आवास की दूरी अस्पताल से ह: कि० मी० की है ।

क्रमांक 2 एवं 5 के चयनित ममता की निवास अस्पताल से 5 कि० मी० है । एक ही चयनित ममता की आवास की दूरी अस्पताल से मात्र 4

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(5)

अतः अनुरोध करना है कि जी गई मानक से हटकर फिर गए ममता की चयन से आवेदिका सुधी देवी पति शोभानन्द राम ग्राम + पो० बईया, बिहारी गंज जिनकी आवास अस्पताल से मात्र 200 गज की दूरी पर है। तथा जो ममता में चयन की सारी अर्हताएँ रखती है। के साथ भेद-भाव बरती गयी ।

सभी चयनित ममता से मोटी रकम रिश्कत लेकर लोक से हटकर उन्हें नियुक्त (चयनित) किया गया। चयन में दूसरे प्रतण्ड को भी प्राथमिकता दी गई जो गलत था, जबकि रिश्कत नहीं देने के चलते बिहारीगंज प्रतण्ड व अस्पताल के काफी करीब आवासन करने वाली आवेदिका के आवेदन को अस्वीकृत किया गया जो अनैतिक व दुर्भाग्यपूर्ण है ।

कृपा इस मामले में हस्तक्षेप कर पीड़ित आवेदिका को न्याय दिलाया जाय ।

विश्वास भाजन,

छो।- सुधी देवी,

वाइफ ऑफ शोभानन्द राम,

पिटीशनर ,

9-3-2011 प्रथम साक्षात्कार

14-3-2012 विरुद्ध में आवेदन दिया।

[Handwritten signature]

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To,

The District-Magistrate,
Madhepura

Sub:- Representation in respect to appointment for the post of Mamta
in the Primary Health Center, Bihariganj.

Sir,

I have to say that as per advertisement, I had applied for the post of MAMTA (Class IV worker) on the prescribed format given on the notice board along with all the required certificates/testimonials. Before the medical officer, Primary Health Center, Bihariganj. The said post of mamta was only for the candidates who resides within 5 K.M. radius of Bihariganj. I belong to harijan by caste. I had applied for the said post but I come to know that in appointment process of mamta irregularities have been committed, by the medical officer-in-charge, Primary Health Center, Bihariganj. I filed an application before RTI. Through RTI, I got final selection list. It shows that six candidates have been selected for the above noted post and out of that two candidates belong to different block and they have not fulfilled the essential requirements for the said post. Their residence are more than 8 K.M. from the Primary Health Center, Bihariganj. In spite of that they have been selected reasons best known to them. It is my humble prayer that may kindly cancel the said selection list and a fresh list be prepared as per rules and regulations and my application be considered for appointment of the said post.

Thanking you.

Your's

Dated:- 12-01-2013

(Budhani Devi)
W/o Shobha Nand Ram
Bihariganj, Madhepura