

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16617 of 2022

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Anupam Dvivedi Widow of Late Vikash Kumar Dvivedi, Resident of Shankar Chowk, Ward No-18, Bettiah, District-West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar. Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director in Chief Health Services, Bihar, Patna.
4. The Additional Director, Health Services-Cum-State Programme Officer, Leprosy, State Leprosy Eradication Office, Bihar, Patna.
5. The Civil Surgeon-Cum Chief Medical Officer, West Champaran at Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Advocate
	:	Mr. Akshansh Shanker Singh, Advocate
	:	Mr. Barun Kumar Singh, Advocate
	:	Mr. Amit Kumar Mishra, Advocate
For the State	:	Mrs. Vijaya Laxmi Srivastava, AC to SC-23

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT
Date : 03-02-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:-

A) For issuance of an appropriate writ/writs, order/orders to quash the non speaking and unreasonable order contained in Memo No. 893 dated 7.10.2022 (Annexure-12) issued under signature of the Director in Chief Health Services, Bihar, Patna (Respondent No-3) by which the petitioner has been demoted from the post of Lower



division clerk (LDC) to the class-IV post under Civil Surgeon, Bettiah in most arbitrary and unreasonable manner without any justification and contrary to the established norms of the Service Jurisprudence.

B) For a consequential writ to set-aside the follow up order contained in memo no.2031 dated 3.11.2022 issued from the office of Civil Surgeon-cum-Chief Medical Officer, West Champaran, Bettiah (Annexure-13) by which the petitioner has been demoted from the class-III post of clerk to the class-IV post of office attendant and has been posted at Additional Primary Health Centre, Senuwaria (Majhauria) and further the writ of mandamus or any other appropriate writ/writs. order/orders, direction/directions upon the respondents to allow the petitioner to continue as Lower Division Clerk (LDC) in the pay scale of 5200-20200/- grade pay 1900/-under Civil Surgeon-cum-Chief Medical Officer, West Champaran, Bettiah.

3. At the outset, the learned counsel for the petitioner submits that after death of her husband, the petitioner was appointed on compassionate ground vide Memo No. 142 dated 16.01.2011, issued under the signature of the Civil



Surgeon-Cum-Medical Officer, West Champaran at Bettiah, on a class-IV post in the pay scale of Rs. 4440-7440/- with grade pay of Rs. 1300/-. The appointment of the petitioner was made on the recommendation of the District Compassionate Appointment Committee vide its meeting dated 07.12.2010 and the recommendation made by the District Magistrate, West Champaran at Bettiah vide Memo No. 743 dated 09.12.2010. Accordingly, the petitioner gave her joining at Additional Primary Health Centre, Leprosy Eradication Unit, Bettiah.

4. It has further been contended on behalf of the learned counsel for the petitioner that although the petitioner was having Intermediate qualification at the time of her appointment, but the respondent authorities deliberately by ignoring the same, appointed the petitioner on Class-IV post, although being Intermediate pass, she was entitled for being appointed on Class-III post. It has further been contended that at the same time i.e. in 2011, in the same district, some other appointments were also made on compassionate ground and the persons having qualification of Intermediate degree were appointed on Class-III posts. In support thereof, the petitioner has brought on record Annexure-2 to the writ petition which has been issued by the District Magistrate, West Champaran at



Bettiah.

5. It is further case of the petitioner that the State Government vide notification dated 02.12.2023 contained in सं० सं०-4/विधि-8-102/2013-1720(4) (annexure-3 to the writ petition) issued under the signature of the Director-In-Chief, Health Services, Bihar, Patna addressed to State Programme Officer (leprosy, malaria, filaria, tuberculosis, blindness), all the Superintendent/Principal of all the medical colleges/hospitals and all the Civil Surgeons in the State of Bihar, it was directed that in view of the letter issued by the General Administration Department on 23.03.2011, a provision has been made for grant of promotion to the clerical cadre, from group "घ" employees on the basis of seniority and roster, who having qualification of matriculation against 15% quota. Subsequently, vide Memo No. 209 dated 25.05.2015 issued under the signature of the District Programme Officer (Leprosy), State Leprosy Eradication Office, Bihar, Patna addressed to all the District/In-Charge, District Leprosy Eradication Officers, it was intimated/directed that in view of the letter dated 02.12.2013 issued by the Director-In-Chief, Health Services (Annexure-3 to the writ petition), the original certificate of Matriculation is required of Class-IV employees, working in the services of the State Government in



National Leprosy Programme, for being promoted to the post of Clerk. Some other directions were also given in the above mentioned letter. In compliance thereof, the Additional Chief Medical Officer-Cum-Drawing and Disbursing Officer, Leprosy Control Unit, West Champaran at Bettiah vide his letter no. 15 dated 12.06.2015, addressed to the State Programme Officer (Leprosy), Bihar, Patna recommended the case of the petitioner for her promotion to Class-III post. Along with the letter, all the relevant documents, including the educational qualification of the petitioner were also sent.

6. It is further case of the petitioner that vide memo no. 266 dated 27.07.2016 issued under the signature of the Additional Director, Health Services-Cum-State Programme Officer (Leprosy), Bihar, Patna, the petitioner was promoted to the post of LDC in the pay scale of Rs. 5200-20200/- with grade pay of Rs. 1900/- and the petitioner was posted in the office of the State Leprosy Eradication Office, Bettiah. In compliance of Memo No. 266 dated 27.07.2016, the competent authority vide order contained in Memo No. 309 dated 14.02.2017 notified the same and gave posting to the petitioner. Subsequently, the petitioner appeared in the departmental examination, which was held on 26.12.2017 and 27.12.2017, wherein she was declared



successful. The name of the petitioner appears at serial no. 7 of the result of the said departmental examination.

7. It has further been contended by the learned counsel appearing on behalf of the petitioner that all of a sudden vide letter no. सं०सं०-11/एल० (स्था०)-05/2018- 192 (11) dated 10.03.2022 issued under the signature of the Director-in-Chief, Health Services, Bihar, Patna, a show cause notice was issued to the petitioner that why the promotion given to her be not cancelled, since the same has been given in violation of the Department Notification No. 1060(4) dated 01.12.2014, wherein the appointing authority for clerical cadre has been notified as Civil Surgeon in the District and the Superintendent in the Medical colleges and hospitals. It was further mentioned in the letter that the State Programme Officer (Leprosy), Bihar, Patna is not the competent authority to grant the same. Immediately thereafter, vide letter no. सं०सं०-11/एल० (स्था०)-05/2018-257(11) dated 30.03.2022, a reminder was sent to the petitioner to give her explanation within one week. In compliance thereof, the petitioner submitted her detailed representations on 26.03.2022 and 12.04.2022, wherein the petitioner gave all the relevant documents and her explanation to the show cause notice issued on 10.03.2022 and 30.03.2022. It has further been contended



that vide memo no. 893 (11) dated 07.10.2022 issued under the signature of Director-In-Chief (disease control, public health, paramedicals) Health Services, Bihar, Patna, the petitioner was reverted to Class-IV post.

8. It has been further submitted by learned counsel for the petitioner that the order impugned has been passed without even going through the explanation submitted by the petitioner, since no consideration has been made by the authority concerned while reverting the petitioner from Class-III post to Class-IV post. Accordingly, vide Memo No. 2031 dated 03.11.2022 issued under the signature of the Civil Surgeon-Cum-Chief Medical Officer, West Champaran at Bettiah, the order of reversion of the petitioner from Class-III post to Class-IV post was issued from the date of the issuance of the letter and the petitioner was posted in Additional Primary Health Center, Senuwaria, Majhauria on a Class-IV post.

9. Learned counsel for the petitioner further submits that the order impugned has been passed on erroneous consideration that the petitioner has been promoted on compassionate ground and not by the competent authority. Although, the promotion has not been granted on compassionate ground, rather it has been granted to the petitioner in view of the



policy decision of the State Government to reserve 15% posts for grant of promotion from Class-IV employees to Class-III employees. It has further been contended that as per the policy decision of the State Government a Class-IV employee having intermediate/matriculation qualification is/was entitled for being considered under the 15% quota and since the petitioner was having the said qualification from the date of appointment itself, the appointing authority recommended the case of the petitioner for grant of promotion to Class-III post and there is no illegality in the same.

10. It has been contended on behalf of the learned counsel for the petitioner that the authority concerned while passing the impugned order did not give any reasoning in the order impugned and merely by writing that after consideration of the show cause submitted by the petitioner, he has come to the conclusion that the promotion granted to the petitioner be cancelled. It has further been submitted that the order impugned is without reasoning and which is being tried to be supplemented by the reasoning given in the counter affidavit filed on behalf of the respondent-State. Learned counsel for the petitioner in support thereof relies on a judgment in the case of ***Mohinder Singh Gill & Another vs The Chief Election***



Commissioner, New Delhi & Others reported in ***(1978) 1 SCC 405*** wherein in paragraph no.8, the Hon'ble Supreme Court has been pleased to hold that:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to



whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

11. Per contra, the learned counsel appearing on behalf of the State submits that the promotion granted to the petitioner was not given by the competent authority since the Additional Director, Health Services-Cum-State Programme Officer (Leprosy), State Leprosy Eradication Office, Patna, granted promotion to the petitioner from Class-IV post to Class-III post beyond his jurisdiction, since vide letter no. 1060(4) dated 11.12.2014 of the Health Department, the appointing authority of the Class-III post, is Civil Surgeon-Cum-Chief-Medical Officer of that district and in Medical Hospital, the appointing authority is the Superintendent of that Medical Hospital. It has further been contended that with respect to the appointment on compassionate ground the General Administration Department in Clause 9(Ka) in Notification No. 13293 dated 05.10.1991 specifically stated that after appointment on compassionate ground, the appointee shall not be again benefitted by giving promotion or by cadre transfer. It has further been contended that the Rules with respect to the



appointment of Clerk and their service condition have been laid down in which sub-Clause (1) of Clause-5 stipulates that 85% of the post of LDC shall be filled up directly on the recommendation of the Commission and remaining 15% post of LDC shall be filled up through promotion of Group-D employees who possess Intermediate/10+2 qualification and the said promotional post shall be filled up through Seniority list. It has further been contended that the Group-D employees shall be promoted on the recommendation of the Departmental Promotion Committee.

12. After having heard the learned counsel for the parties and after going through the documents on records, I find that the petitioner was appointed on the recommendation of the District Compassion Appointment Committee and the District Magistrate, West Champaran at Bettiah by following due procedure of law. The petitioner was recommended for being considered for promotion on Class-III post by the competent authority in view of the policy decision of the State to grant promotion to Group-D employees who possessed Intermediate/Matriculation qualification against 15% quota reserved for them. During course of hearing of the present writ petition, a specific query was made to the learned counsel for



the petitioner that no document has been brought on record with regard to the petitioner having obtained the qualification of matriculation or above, since, in the counter affidavit filed on behalf of the respondent-State a categorical statement has been made in paragraph-4 that the petitioner was appointed on compassionate ground on Class-IV post since she was having the requisite qualification of '*Madhyama*'. Learned counsel for the petitioner handed over all the original documents including admit card, mark-sheet and provisional certificate issued by the Bihar School Examination Board to the petitioner with regard to her obtaining Intermediate qualification. From perusal thereof, it transpires that the petitioner had obtained Intermediate qualification in the year 2009 itself and from Annexure-5 to the writ petition, it appears that all the relevant documents including the documents mentioned above were forwarded to the competent authority, while recommending the case of the petitioner for being promoted to a Class-III post. The order of promotion was issued by the Civil Surgeon-Cum-Chief Medical Officer, West Champaran, Bettiah on the basis of the policy decision of the State Government and the said promotion has not been granted on compassionate ground as has been mentioned in the counter affidavit filed on behalf of the



respondent-State. The said promotion has been granted against 15% quota reserved for Class-IV employees in view of the policy decision of the State Government dated 02.12.2013 and 25.05.2015. It appears that the Director-In-Chief, Health Services while passing the impugned order contained in memo No. 893(11) dated 07.10.2022 was not aware of the policy decision of the State Government or deliberately and intentionally relied upon clause 2 (VI) of letter no. 1060 dated 01.12.2014, which relates to Appointment. Further, the Director-in-Chief, Health Services for the reasons best known to him did not even consider the representation/show cause filed by the petitioner and passed the impugned order dated 07.10.2022 on erroneous ground. Further, the respondent authorities in their counter affidavit have stated that for promotion from Group-D post to Group-C post, the exercise has to be taken on the recommendation of the departmental promotion committee and relied on the notification contained in Memo no. 1060(4) dated 01.12.2014.

13. It appears from Clause-15 of the notification contained in Memo no. 1060(4) dated 01.12.2014, that procedure for promotion has been given, but nowhere in the counter affidavit or the writ petition it has come that the said



procedure was followed or not. The only contention raised in the counter affidavit is that the same has not been given by the competent authority, since the Civil Surgeon-Cum-Chief Medical Officer, West Champaran, Bettiah was not competent to grant the same.

14. Accordingly, from the discussions made above, the order impugned contained in memo No. 893 (11) dated 07.10.2022 issued under the signature of the Director-in-Chief, Health Services, Government of Bihar, Patna and the consequential order contained in Memo No. 2031 dated 03.11.2022 issued under the signature of the Civil Surgeon-Cum-Chief Medical Officer, West Champaran at Bettiah are hereby set-aside.

15. The respondent-authorities are at liberty to verify that whether while giving promotion to the petitioner, the procedure mentioned in Clause-15 of letter no. 1060(4) dated 01.12.2014 was followed or not and if they come to the conclusion that the same was followed then no further orders are required to be passed, but if it is found that the same was not followed then the respondent authorities by following the due procedure prescribed under law will proceed afresh after giving due notice to the petitioner. It is further clarified that since the



petitioner has already discharged her duties on the promoted post till issuance of the impugned order dated 03.11.2022, no recovery or adverse order shall be passed against the petitioner for the period till 03.11.2022.

16. The writ petition is disposed of in the aforementioned terms.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2026
Transmission Date	NA

