

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7401 of 2020**

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1. Sudha Devi Wife of Naresh Mandal D/o Nathuni Mandal, Resident of Village- Lohapipar, P.S.- Babubarhi, District- Madhubani.
2. Rekha Kumari Wife of Shobhakant Roy D/o Parmeshwar Roy, Resident of Village- Dudahi, P.S.- Babubarhi, District- Madhubani.
3. Sangeeta Kumari Wife of Rudrapratap Ranjan D/o Indra Narayan Jha, Resident of Village- Moglaha, P.S.- Babubarhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The Principal Secretary Health and Family Welfare Department, Govt. of Bihar, Patna.
2. The Executive Director of State Health Society of Bihar Patna.
3. The Deputy Secretary of State Health Society of Bihar Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjeev Kumar Jha, Adv.  
For the Respondent State: Mr. Rajeshwar Singh, G.A. 10  
Mr. Manoj Kumar Yadav, AC to GA-10  
For the Respondents No.2& 3: Mr. K.K. Sinha, Adv.  
Mr. Shashi Shekhar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL JUDGMENT**

**Date: 26.02.2021**

The present writ petition has been filed for setting aside the illegal list of candidates, shortlisted for documents verification with regard to appointment on the post of ANM (NUHM), in pursuance to the advertisement No. 12 of 2019, issued by the respondent no. 2. The petitioners have further prayed for directing the respondent-authorities to follow the



guidelines issued by the State Health Society of Bihar (herein after referred to as the “Health Society”), with regard to publication of result of the petitioners and others as well as to take fair and impartial steps with regard to publication of the result of the computer based test appertaining to the said Advertisement No. 12 of 2019, as far as the post of ANM (NUHM) is concerned and then prepare the merit list for the purposes of appointment on the post of ANM (NUHM).

2. The brief facts of the case are that an advertisement bearing Advertisement No. 12 of 2019 dated 27.12.2019 was issued by the Health Society, Patna for the purposes of making appointment on the post of Lab Technician (NUHM) and ANM (NUHM). As far as the Lab Technician (NUHM) is concerned, total number of posts advertised were 100 and as far as ANM (NUHM) is concerned, the total number of posts advertised were 500. Clause-12 of the aforesaid Advertisement No. 12 of 2019 prescribes the basis for selection. Under the said clause-12, it has been stipulated that the merit list shall be prepared on the basis of the marks obtained in the computer based test (CBT), which would be of 50 marks as well as on the basis of academic qualification, which would also be of 50 marks. The petitioners are stated to have filled application forms Online and as far as



the petitioners no. 1 and 2 are concerned, they belong to the Most Backward Class (female) category and as far as the petitioner no.3 is concerned, she also belongs to the female, Economically weaker section category. The Admit cards were then issued to the eligible candidates including the petitioners herein and they had sat for the computer examination on 14.03.2020, however, it is the grievance of the petitioners that the computer based result has not been published till date.

3. The learned counsel for the petitioners has submitted that as per the scheme of selection prescribed in the aforesaid Advertisement No. 12 of 2019, it is imperative to first publish the computer based test results and then publish the merit list, taking into account the marks pertaining to the academic qualifications and only then the appointment can be made, however, the said procedure has not been adopted by the respondent Health Society, hence, the entire selection process has been rendered illegal and void. The learned counsel for the petitioners has further referred to the guidelines issued by the Health Society, which is at Annexure-5 series to the writ petition and it has been submitted that after conduct of the computer based online test, a merit list was required to be prepared and only then shortlisted candidates were required to be called for document verification/



counseling in the ratio of 1:1.5, however, the said process has not been followed by the respondents.

4. Per contra, the learned counsel for the Health Society has submitted by referring to the counter affidavit filed on behalf of the respondents no. 2 and 3, that the petitioners had submitted application against the Advertisement no. 12 of 2019 for their appointment on the post of ANM (NUHM) along with the requisite documents and fees and had also appeared in the computer based test held on 14.03.2020. It is also submitted that Clause-12 of the said Advertisement No. 12 of 2019 prescribes the mode of selection process as well as the criteria for selection and both computer based test and academic qualifications carry 50 marks each. It is further submitted that after holding the computer based test, the respondent- Health Society had prepared as list of qualified candidates whereupon the Society had published the merit list of shortlisted candidates and they were called for documents verification in the ratio of 1:1.5. It has been submitted that on account of increasing Covid cases in the city of Patna, the document verification/ counseling process was re-scheduled and was slated to be held in between 10.07.2020 to 18.07.2020. Thereafter, 1321 candidates were called for documents verification in the ratio of 1:2.5 vide notice dated



30.10.2020 and the schedule was fixed in between 09.11.2020 and 13.11.2020.

5. The learned counsel for the respondent Health Society has further submitted that the entire selection process has been held as per the guidelines contained in the aforesaid Advertisement No. 12 of 2019 and it is apparent that the shortlisted candidates are required to be called for documents verification, depending upon the total marks obtained by them, both in the computer based test as well as against their academic qualification, apart from taking into account the roster category and ratio, which is required to be decided as per the vacant posts. It is thus submitted that there is no stipulation in the aforesaid Advertisement No. 12 of 2019 to first publish the result of computer based test of all the candidates, rather the advertisement stipulates publication of final merit list of the qualifying candidates, after completion of the selection process. It is submitted that the marks obtained by the candidates in the computer based test are added with the marks obtained by them in the academic qualification criteria, in order to arrive at the final scores obtained by the respective candidates out of 100 marks.

6. The learned counsel for the respondent- Health Society has



further submitted, by referring to the supplementary affidavit filed on behalf of the respondent- Health Society that after completing the necessary formalities and taking into account the terms and clauses of the aforesaid Advertisement No. 12 of 2019 as also the guidelines issued by the respondent Health society, the final select list of the successful candidates has already been published on 05.01.2021.

7. I have heard the Ld. Counsel for the parties and gone through the materials available on record as also have considered the submissions advanced by the learned counsel for the respective parties. At this juncture, it would be relevant to reproduce Clause-12 and 13 of the aforesaid advertisement No. 12 of 2019 herein below:-

**12. चयन का आधार:-**

(i) निम्नलिखित के आधार पर मेधा सूची तैयार की जायेगी:-

चयन हेतु निम्नलिखित के अनुसार 100 (एक सौ) पूर्णांक होगा-

Sl. No.	Name of Post	Total No. of Post	Selection Process & Criteria			Salary Per Month
1	Lab Technician (NUHM)	100	Computer Based Test (CBT)	Academic Qualification	Inter view	
			50	50(0.5 for each percentage of marks in	NA	12,000



				Essential Qualification)		
2.	ANM (NUHM)	500	50	50(0.5 for each percentage of marks in Essential Qualification)	NA	11,500

13. मेधा सूची में Tie होने पर दिशा—निर्देश:

अन्तिम रूप से सफल अभ्यर्थियों की मेधा सूची प्राप्त अंको के आधार पर आरक्षण कोटिवार तैयार की जायेगी। दो या दो से अधिक अभ्यर्थियों के समान अंक प्राप्त करने की दशा में मेधा सूची में उनके स्थान का निर्धारण उनकी जन्म तिथि के आधार पर किया जायेगा अर्थात् उम्र में वरीय अभ्यर्थी मेधा क्रम में उपर रहेंगे। समान अंक प्राप्त करने एवं समान जन्म तिथि वाले दो या दो से अधिक अभ्यर्थियों की दशा में मेधा सूची में उनके स्थान का निर्धारण उनकी शैक्षणिक योग्यता के आधार पर किया जायेगा अर्थात्, अधिक शैक्षणिक योग्यता वाले अभ्यर्थी मेधा क्रम में उपर रहेंगे। इसके बावजूद यदि एक से अधिक अभ्यर्थी समान हों तो ऐसे अभ्यर्थियों की वरीयता उनके 10वीं बोर्ड के प्रमाण—पत्र में यथा उल्लिखित नाम के अंग्रेजी वर्णमाला के क्रम के अनुसार निर्धारित की जाएगी।

8. It would be apparent from the aforesaid Clause-12 and 13 of the Advertisement No. 12 of 2019 that there is no stipulation regarding publication of any merit list, solely on the basis of the computer based test and the only procedure prescribed is that a merit list would be prepared on the basis of the marks obtained by the respective candidates in the computer based test totaled up with the marks obtained against the academic qualification, meaning thereby that the merit list has to be prepared on the



basis of marks obtained by the respective candidates out of a total of 100 marks. It is also clear that finally a list of the successful candidates has to be prepared, on the basis of the marks obtained by them, as aforesaid and upon verification of their documents by calling the said candidates in the prescribed ratio as also after applying the reservation roster. Consequently, this Court finds that the said selection procedure, as prescribed in Advertisement No. 12 of 2019 and in the guidelines issued by the State Health Society of Bihar, has duly been followed by the respondent Health Society and only then the final select list of the successful candidates has been published vide office Order No. 7046 dated 05.01.2021. Thus, this Court does not find any infirmity in the selection process adopted by the respondent Health Society, hence, the present writ petition is bereft of any merit.

9. Another aspect of the matter is that the respondent Health Society has already published a list of 500 successful candidates for appointment on the post of ANM (NUHM) and they are stated to have also joined at their place of posting, nonetheless, the petitioners have failed to not only challenge the final select list of the successful candidates but have also not impleaded the said successful candidates as parties respondents to the present



writ petition inasmuch as they are necessary parties to the instant lis. In this connection reference be had to a judgment reported in (2010) 12 SCC 204 [**Public Service Commission vs. Mamta Bisht**], paragraph nos. 9 and 10 whereof are reproduced herein below:-

"9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia v. Board of Revenue* [AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [AIR 1965 SC 1153] , *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [(1974) 2 SCC 706 : AIR 1974 SC 2105] and *Sarguja Transport*



*Service v. STAT* [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .)

**10.** In *Prabodh Verma v. State of U.P.* [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] and *Tridip Kumar Dingal v. State of W.B.* [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

10. I would like to refer to yet another judgment reported in (2014) 16 SCC 187 [**Ranjan Kumar vs. State of Bihar**], paragraph nos. 4 to 13 whereof are reproduced herein below:-

"4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in *Prabodh Verma v. State of U.P.* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as



secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: (*Prabodh Verma case* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , SCC pp. 273-74, para 28)

“28. ... The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative



capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

5. In the case at hand neither was any rule nor any regulation challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.

6. In *Indu Shekhar Singh v. State of U.P.* [*Indu Shekhar Singh v. State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] it has been held thus: (SCC p. 151, para 56)

“56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

7. In *Rashmi Mishra v. M.P. Public Service Commission* [*Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] , after referring to *Prabodh Verma* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] and *Indu Shekhar Singh* [*Indu Shekhar Singh v. State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , the Court took note of the fact that when



no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

**8.** In *Tridip Kumar Dingal v. State of W.B.* [*Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

**9.** In *Public Service Commission v. Mamta Bisht* [*Public Service Commission v. Mamta Bisht*, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus: (SCC pp. 207-08, para 9)

“9. ... in *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] , wherein the Court has explained the



distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of the Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 of the Code of Civil Procedure but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [*Gulabchand Chhotalal Parikh v. State of Gujarat*, AIR 1965 SC 1153] , *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Sarguja Transport Service v. STAT* [*Sarguja Transport Service v. STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19] .)”

**10.** In *J.S. Yadav v. State of U.P.* [*J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140] , it has been held that: (SCC p. 583, para 31)

“31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on



such a party as the same has been passed in violation of the principles of natural justice.”

It was further held that: (SCC p. 583, para 31)

“31. ... The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.”

**11.** In *Vijay Kumar Kaul v. Union of India* [*Vijay Kumar Kaul v. Union of India*, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491] it has been ruled thus: (SCC p. 619, para 36)

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

**12.** Recently in *State of Rajasthan v. Ucchab Lal Chhanwal* [*State of Rajasthan v. Ucchab Lal Chhanwal*, (2014) 1 SCC 144 : (2014) 1 SCC (L&S) 34] , it has been opined that: (SCC p. 149, para 14)



“14. ... Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice.”

**13.** In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners”.

11. It is thus apparent from the law laid down by the Hon’ble Apex Court in the cases of **Mamta Bisht** (supra) and **Ranjan Kumar** (supra) that in a case where the appointees have not been impleaded, the petitioners herein cannot be granted any relief for the reasons that firstly the selection of the successful/ appointed candidates cannot be set aside without affording an opportunity of hearing to them and secondly, the writ petition suffers from the vice of non-joinder of necessary parties, thus, on this score as well, the instant writ petition is fit to be dismissed.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, I do not find any merit in the present writ petition,



hence, the same stands dismissed, however, without any order as to costs.

**(Mohit Kumar Shah, J)**

Tiwary/-

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