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**(2008) 07 PAT CK 0069**  
**In the Patna High Court**  
**Case No : MJC No. 2341 of 1999**

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| Manorama Kumari and Others    | Vs | APPELLANT  |
| Anjani Kumar Verma and Others |    | RESPONDENT |

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**Date of Decision :** 29-07-2008

**Acts Referred:**

**Citation :** (2008) 3 PLJR 715

**Hon'ble Judges :** R.M. Lodha, C.J;Kishore. K. Mandal, J

**Bench :** Division Bench

**Advocate :** Mritunjay Prasad Singh No. 2, for the Appellant; S.K. Ghosh, Rajesh Kumar Singh for the Respondent No. 7 and Mr. Sanjay Pandey for the Respondent No. 8, for the Respondent

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## Judgement

1. We heard Mr. Mritunjay Prasad Singh No. 2, counsel for the petitioners and Mr. S.K. Ghosh, A.A.G. II, for the respondent State. In the writ petition, the petitioners raised grievance relating to their appointment to the post of Auxiliary Nurses Midwife. This Court directed the concerned authority to consider the case of the petitioners for appointment in the light of the direction issued in the case of Sudha Kumari.

2. The matter was considered thus:-

"Learned counsel for the petitioners relied upon a judgment of this court in the case of Sudha Kumari and Others vs. State of Bihar and Others (C.W.J.C. No. 6870 of 1996, and other batch cases), disposed of on 25.7.1997.

In the case of Sudha Kumari (supra), this court held that in the cases where advertisements have been issued for appointment prior to coming into force of the aforesaid resolution dated 10.6.1996, the procedure for selection, as was existing at the time of advertisement or initiation of the process of selection, shall be followed. In other words, if the appointment is to be made on the basis of marks obtained by the candidates in the relevant examination/ interview/ written test, the same mode will be applicable for appointment out of those

advertisement. This Court further held that so far as the procedure of appointment is concerned, such procedure of appointment is to be followed in terms with resolution dated 10.6.1996, according to which, if the selection is to be made through a committee but not made prior to 10.6.1996, then such selection will be through the Bihar Public Service Commission as laid down under the said resolution dated 10.6.1996, and the appointment order is to be issued by an authority, who has been empowered to issue such order of appointment by the said resolution and not in terms of the earlier guideline.

In the cases of the petitioners of this case, it appears that the advertisement was also issued and interview was also held earlier. In that view of the matter, in their cases, the rule, which was applicable prior to 10.6.1996, will be applicable. As such the respondents are directed to consider the cases of the petitioners for appointment in the light of the directions issued by this Court earlier in the case of Sudha Kumari (supra)."

3. The petitioners have alleged that the respondents have deliberately and intentionally circumvented the order of this Court by not giving the appointment to them to the post of Auxiliary Nurses Mid-Wife in the light of the decision of this Court in the case of Sudha Kumari (supra) on reconsideration.

4. There has been show causes filed by the various Opposite Parties and also supplementary show cause. Rejoinder to the show cause has been filed by the petitioners.

5. In the connected matter being M.J.C. No. 2063 of 1999 (Renuka Kumari and Others vs. The State of Bihar and Others) when the matter came up before us on 7th July, 2008, we directed Mr. S.K. Ghosh, Additional Advocate General to take instructions in all the five connected matters, namely, M.J.C, Nos. 221 of 1999, 2117 of 1999, 2341 of 1999, 2087 of 2000 and 2063 of 1999 and also Tile an affidavit, if necessary.

6. Pursuant to the aforesaid direction, an affidavit of the Director-in-Chief, Department of Health, Government of Bihar, Patna has been handed over to us in Court for our consideration.

7. In paragraphs 7, 8, 9, 12, 13 and 15 of the said affidavit following statement has been made:-

"7. That it will not be out of place to mention herein the procedure/method of appointment of A.N.M. (Auxiliary Nurses & Mid Wife) prior to 10.6.1996, Prior to 10.6.1996 A.N.M."s were appointed on the recommendation of District Selection Committee (headed by the District Magistrate) by the Civil Surgeon of respective districts. The District Selection Committee use to consider the cases of only those candidates who successfully completed the training and were registered with the Bihar Nurses Registration Council,

8. That the State Government after receiving several complaints with regard to irregularities in selection/appointment of A.N.M., took a policy decision vide

Memo No. 435 dated 10.6.1996 by which it was decided that the selection/appointment of A.N.M. shall be made on the recommendation of the Bihar Public Service Commission.

9. That from the bare perusal of resolution dated 10.6.1996 and criteria for appointment of A.N.M. prior to 10.6.1996, it will be evident that resolution dated 10.6.1996 has not brought any changes in the qualification or eligibility for appointment. The only change brought about is that the appointment is to be made on the basis of written examination by the Bihar Public Service Commission.

12. That all the writ petitions out of which present contempt petitions have arisen were disposed of to consider the cases of the petitioners for their appointment in the light of aforementioned order/judgment dated 25.7.1997. The position/cases of the petitioners of each contempt petition are as under:-

(i) M.J.C. No. 2063 of 1999 (Renu Kumari & Ors.)

(ii) M.J.C. No. 2087 of 2000 (Punam Kumari)

(iii) M.J.C. No. 2341 of 1999 (Manorma Kumari & Ors.)

Admittedly advertisement was issued on 14.4.1994. In the supplementary show cause filed in the case of Renu Kumari & Ors. it has categorically been stated at paragraph no. 6 that the Hon''ble Court vide order dated 25.7.1997 (Sudha Kumari's Case) has directed that if any panel was issued prior to 1996 that could not be given effect having lost its force in the meantime. The petitioners (Renu Kumari & Ors.) in their reply to the show cause has admitted the fact at paragraph no. 3 (k, I & m) that cases of petitioners were considered by the District Selection Committee on 25.11.1994 and except petitioner no. 4 all other petitioners were not selected.

Thus it is obvious that the process for selection pursuant to advertisement published in the year 1994 was complete prior to 10.6.1996 and no further advertisement was published between 1994 and 10.6.1996. Moreover, panel prepared in the year 1994 lost its force.

(iv) M.J.C. No. 221 of 1999 (Manju Kumari & Ors.)

In this case, neither advertisement nor process for selection was initiated prior to 10.6.1996. Thus, in view of Hon''ble Court's order dated 25.7.1997 (Sudha Kumari's Case), the resolution dated 10.6.1996 will be applicable for these petitioners.

(v) M.J.C. No. 2117 of 1999 (Ruqaiya Khatoon)

Petitioner responded to an advertisement published in the year 1994 but her case was rejected without assigning any reason. Thereafter, in compliance of Hon''ble Court's order passed in the writ petition, the name of petitioner was forwarded to B.P.S.C. vide letter no. 646 dated 26.5.1999 in view of Sudha

Kumari's case. B.P.S.C. recommended the name of the petitioner for her appointment and accordingly she was appointed vide order no. 374 dated 21.6.2001. But due to information with respect to some irregularities in the appointment of the petitioner, her appointment was cancelled vide Memo No. 871 dated 26.5.2001. Later on after being satisfied, the petitioner was appointed vide Memo No. 221 dated 1.4.2002.

13. That it will be worthwhile to mention herein that several similar writ petitions being C.W.J.C. No. 12676, 588, 784, 1062, 1916, 3592, 6949, 8209, 10419, 11779 and 14306 ail of the year 2001 came up for hearing by the Hon''ble Single Judge of this Hon''ble Court and vide order dated 1.3.2002 all the writ petitions were referred to the Hon''ble Division Bench. The Hon''ble Division Bench vide order dated 15.7.2002 after observing that "the dispute precisely is whether appointment should be made as per the procedure existing prior to 10.6.1996 or on the basis of the written examination etc. as prescribed by resolution dated 10.6.1996" dismissed the writ petitions. The Hon''ble Division Bench has held in its order dated 15.7.2002 that all the vacancies shall be filled up by the procedure prescribed by the resolution dated 10.6.1996.

15. That it will further be relevant to mention herein that contempt petitions arising out of the writ petitions in which similar orders were passed by the Hon''ble Court as in the present case, the Hon''ble Court has been pleased to dispose of the contempt petitions."

8. A perusal of the aforesaid statement made by the Director-in-Chief, Department of Health, Government of Bihar, would show that where the advertisement was issued prior to 10th June, 1996, the existing procedure for selection was to be followed and where the process for selection was initiated on or after 10th June, 1996, the process was to be followed as per the advertisement made on 10th June, 1996. With regard to the present petitioners, as would be seen, the details have been set out in paragraph 12 of the aforereferred affidavit.

9. From none of the show cause filed by the Opposite Parties or the affidavit of the Director-in-Chief, Department of Health, Government of Bihar filed today, it appears that in compliance of this Court's order, the case of the petitioners has been considered in the light of the decision given in Sudha Kumari's case.

10. Although, more than ten years have passed and yet the order of this Court remains to be complied with. Ordinarily, for this lapse, the respondents could have been proceeded with under the Contempt jurisdiction of this Court. But we do not do so as in our view, the interest of justice will be subserved if the Director-in-Chief, Department of Health, Government of Bihar, Patna, now in compliance of the order of this Court, considers the case of each of the petitioners in the light of Sudha Kumari's case and passes a speaking order within one month from the date of receipt of the order of this Court.

11. We make it clear that non-compliance of this order within the aforesaid time,

shall be treated as deliberate defiance and disobedience of the order of this Court and the Director-in-Chief, Department of Health, Government of Bihar, Patna may expose herself to an action under the Contempt of Courts Act, 1971. M.J.C. is disposed of accordingly.