

---

**(2004) 04 PAT CK 0016**  
**In the Patna High Court**  
**Case No : CWJC No. 8594 of 1999**

Nutan Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 15-04-2004

**Acts Referred:**

**Citation :** (2005) 3 PLJR 319

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Single Bench

**Advocate :** Amar Nath Singh, for the Appellant; A.K. Choudhary, for the Respondent

**Final Decision :** Allowed

---

## Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The petitioner, a registered Nurse, passed her Auxiliary Nures-Mid-wife (ANM for short) in April, 1992 by securing 656 marks out of 900. Under advertisement dated 15.7.1995 (Annexure-5) for filling up 197 vacant post of ANM in the Surgency of Bettiah, the petitioner and number of others applied and appeared in interviews held on 11.8.1995. The results showed that 75 candidates in the general category were appointed and the petitioner was placed at SI. No. 77. All those 75 persons joined the services and continued to work. On 10.6.1996 the State Government changed the procedure for appointment of the ANM and directed that the concerned Department/Surgency shall send its recommendations to the BPSC and the BPSC after conducting the test/examination shall submit its results and recommendations to the concerned Surgency for appointment. It appears from the records and is also not disputed by the respondents that on subsequent verification it was found that as many as 19 candidates had submitted bogus certificates and bogus marks-sheets and could secure the appointments, those 19 persons were removed in the year 1998. The petitioner thereafter on 31.7.1999 made an application to the Civil Surgeon-cum-Chief Medical Officer, Bettiah that as the certificates of 19 appointed persons were forged and as their

services have been terminated the said seats have fallen vacant and the petitioner who was at SI. No. 77 be issued order of appointment. The respondents Civil Surgeon-cum-Chief Medical Officer did not pass any orders therefore the petitioner has come to this Court.

2. The respondents on notice have submitted their counter. According to them in view of the changed circumstances and enforcement of the Rules providing new process for appointment with effect from 10.6.1996 the petitioner would not be entitled to any order in her favour. They also submit that subsequent to the orders of appointment certain posts remained vacant therefore, various writ applications came to be filed in this Court which were disposed of on 15th July, 2002 and this Court observed that the posts which could be filled prior to 10.6.1996 would not be filled in accordance with the earlier Rules but would be filled in accordance with the rules as on 10.6.1996. They submit that termination of services of 19 candidates would not provide any cause of action in favour of the petitioner.

3. Undisputedly the petitioner was placed at serial number 77, it is also not disputed by the respondents that 19 candidates who were appointed in the general category were removed because their certificates and the marks were forged and they had played fraud with the Department. They also admit that if these 19 persons could not be appointed on the date when appointment orders were issued then the Department in fact instead of filling 75 vacancies had filled only 56 vacancies and allowed 19 vacancies to remain alive. Their submission however, is that if the vacancies for the year 1995 or prior to it have occurred in 1998 then in accordance with the judgment of the Division Bench these will have to be filled in accordance with the procedure as provided in Rules of 10.6.1996.

4. In the matter of Manju Kumari vs. State, CWJC No. 12676 of 2001 decided on 15th July, 2002 by Division Bench of this Court the question posed for consideration was that vacancies in question which were of the earlier period could or could not be filled as per the old procedure and not on basis of the competitive examination. Present is not a case where the vacancies occurring prior to 10.6.1996 are sought to be filled after 10.6.1996. This Court so also the Supreme Court in catena of cases have observed that if a particular process/procedure starts for filling up of the vacancies before coming into force of the new Rules then the new rules would not apply but the earlier process will have to be taken to its logical end. In the present matter the notices for filling up the vacancies was issued "on 15.7.1995 much before 10.6.1996 when the new Rules came into force. In accordance with the settled law the process which started on 15.7.1995 will have to be brought to its logical end in accordance with the application of the rules which were governing the appointments in 1995. In the present matter the results were declared on 19.3.1996 and orders for appointments were issued subsequent to that. It cannot be said by the respondents that if 19 persons who secured appointment on forged documents have not been appointed then the petitioner would not have any chance of

appointment. Those 19 appointments in fact are no appointments in the eyes of law. The post would be deemed to be vacant and the respondents if were required to fill 75 vacancies will have to fill the said vacancies in accordance with the advertisement dated 15.7.1995. If the petitioner was at serial number 77 and could be appointed after rejection of the candidature of those 19 persons then the respondents would not be justified in saying that because of coming into force of the new Rules the petitioners case cannot be considered. This Court must observe that the petitioner is not seeking appointment on a vacancy which existed prior to 10.6.1996 subsequent to coming into force of the Rules. In fact she is seeking an appointment on vacant post which came into existence prior to 10.6.1996 and which was to be filled in accordance with the policy and procedure as applicable prior to 10.6.1996. This Court must observe that the respondents are required to consider the case of the petitioner in accordance with the observations made above and issue orders in favour of the petitioner. It is hereby directed that if the petitioner is not held entitled to the appointment then the respondent would be obliged to give reasons for the same. If the petitioner is held entitled then the petitioner would be entitled to her seniority and increments from the date of order of appointment issued in favour of other candidates but the question relating to the payment of salary for the said period, shall be considered by the respondents in accordance with law within four months from the date of submission of copy of this order. The petition to the extent indicated above is allowed.