

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5991 of 2015

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Dr. Akshay Kumar son of Sri Gena Sinha, resident of village- Hariharpur, Via - Pindaruch, P.S.- Kamtaul , District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Bihar Public Service Commissioner through its Chairman, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
4. The Joint Secretary-cum--Examination Controller, Bihar, Public Service Commission, Bailey, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tewari
For the Respondent/s: Mr. Ashit Kumar Jha, AC to GP6
For the BPSC : Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 12-05-2015

Petitioner wants a mandamus to be issued upon the Bihar Public Service Commission (hereinafter referred to as ‘BPSC’) to permit him to appear and participate in the interview for appointment on the post of General Medical Officer of Basic Grade under Bihar Health Services.

2. There is no dispute on the facts that the petitioner became an applicant in response to the advertisement issued by BPSC. The advertisement is Anneuxre-2. The last date for applying was 20th of August, 2014 but subsequently extended to 5.9.2014.

3. The stand of the petitioner is that since there was no specific indication in the advertisement as to by what time a candidate was supposed to complete his MBBS degree as well as obtain registration from the Medical



Council; the petitioner became an applicant and was hopeful of being considered for such appointment. However, when petitioner got the interview letter, contained in Anneuxre-5, he realized that he may not be successful or may not be allowed to participate in the interview on the basis that he is not registered with the Medical Registration Council of Bihar by 5.9.2014. The date given in the said communication has significance because petitioner's enrollment is dated 17.9.2014.

4. The first submission of the counsel for the petitioner is that since the advertisement did not indicate anything with regard to passing or enrollment of such candidate with Medical Council as would be evident from reading of Clause 3 of the advertisement, the respondent BPSC cannot arbitrarily put a date for compliance by 5.9.2014. Alternatively, it is also urged that since enrollment of the petitioner was not within his hands, there was delay. Therefore, he should not be punished by being debarred from participation.

5. The question raised by the petitioner is not unique, factually and legally. Such issues have come up before this Court in N-number of cases where candidates who do not acquire or fulfil the eligibility on the last date for receipt of applications have approached the Court. Courts have, times without number, declared that even in absence of specific indication in the advertisement with regard to the date of eligibility, the eligibility must be reckoned with regard to the last date of such application required to be filed. Even this Court had occasion to deal with such matter earlier and based on the principles decided by the Hon`ble Apex Court, writ applications have been dismissed because petitioners were looking for similar kind of indulgence with similar kind of submissions. This Court has benefit of decision rendered in the case of **Dr. Rajeev Kumar Vs. State of Bihar and others, 2012 (3) PLJR 417**. The principle decided by the

Apex Court in **Ashok Kumar Sonakar Vs. Union of India and others, (2007) 4SCC 54** in which reliance was placed on para 11, 15 and 20, answers the question raised by the petitioner.

6. Counsel for the BPSC has produced some unreported orders also which are in similar terms.

7. The law being what it is, no leeway can be granted to the petitioner if he does not fulfil the requirement of enrollment by the last date of application which admittedly is said to be 5.9.2014.

8. The interview letter, therefore, refers to the date 5.9.2014 and it is not a mystery as to why 5.9.2014 is indicated as the date for fulfilling the eligibility including enrollment.

9. Writ application therefore is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J)

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