

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.855 of 2015

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1. Dr. Dharmbir Kumar, Son of Shri Ajay Kumar Vanara, Veer Dental Clinic. Braj Laxmi Mansion Apartment, Sahdeo Mahto Marg, Boring Road, Police Station Sri Krishna Puri, Patna.

2. Dr. Ashutosh Kumar, Son of Shri Ramashish Singh, C/o Mr. Ranjeet Prasad, Ganga Bhawan, Jagat Narayan Lal Road, Police Station Kadamkuan, Patna.

3. Dr. Iqbal Shamsi, Son of Md. Shamsuddin, Patna Dental Clinic, B/ 84, Alinagar Colony, Anisabad, Police Station- Anisabad, Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Old Secretariat, Patna.

2. The Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.

.... Respondents

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Appearance :

For the Petitioners : Shri Navendu Kumar, Adv.

For the Respondents : Shri Lalit Kishore (PAAG)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-04-2015

The Health Department of Government of Bihar issued a notification dated 14.10.2014, inviting applications for the posts of Dentists in Government Hospitals. The notification stipulated the criteria to be followed for selecting candidates. Clause-7 prescribes the procedure and Sub-Clause (2) thereof mandates that in the process of evaluation, marks would be awarded to the candidates based on the performance in B.D.S. and M.D.S.course, and for experience in the government hospitals as contractual

employee, subject to a maximum of 25. 15% marks were earmarked for interviews.

The writ petitioners submitted their applications. They challenge the recruitment procedure contained in Clause-7, insofar as it provided for awarding marks for experience of candidates in Government Hospitals. It is stated that on earlier occasions, the Government engaged the service of many qualified candidates to serve as Dentists and, though such appointment was not on regular basis, the service rendered by such candidates is being taken into account, by awarding marks. The petitioners submitted that such a procedure is violative of Articles- 14 and 16 of the Constitution of India and the same cannot be sustained. Reliance was placed upon the Judgment of the Supreme Court in State of Madhya Pradesh Vs. Gopal D Tripathi.¹

Heard Shri Navendu Kumar, learned counsel for the petitioners, and Shri Lalit Kishore, learned counsel for the State.

The grievance of the petitioners is vis-à-vis Clause-7(2)(A)(iii). The relevant provision reads as under:-

“7. (1) The Department after calculating vacancy on the basis of position as on 1st April of the year and getting roster cleared, shall send reservation

1. A.I.R. 2003 S.C. 2953.

categorywise requisition to the Commission latest by 30th April.

(2) In light of requisition received for appointment the Commission shall invite applications by advertising vacancies and shall prepare merit list on following basis:-

(i) For mark obtained in B.D.S.	-50 marks
(ii) For Postgraduate or higher degrees	- 10 marks
(iii) For experience in Government Hospitals- (5 marks per year, maximum 25 marks)	-- 25 marks
(iv) For interview	--15 marks
<u>Total</u>	<u>--100 marks</u>

Clause B is in relation to Specialized Sub-cadre and is almost similar in content. The objection raised by the petitioners is about Clause-7(2)(A)(iii), which provides for award of 5 marks per year of experience in the Government Hospitals subject to a maximum of 25 marks. Even according to the petitioners, several candidates were engaged in Government Hospitals on contractual basis and such candidates are being awarded five marks for each year of experience.

Basically, it is for the recruiting agency to stipulate the procedure for selecting the candidates. It is only when the procedure is found to be patently illegal, that the Court would interfere. For selecting candidates, written test can certainly be treated as a good method, but there is nothing in law which mandates that written test is the only method to select the candidates.

Awarding of marks for experience is not uncommon. The candidates who have been engaged on contractual basis served the Government Hospitals at a time when their other colleagues have been pursuing their green pastures. The State can certainly recognize the service of such candidates, subject, of course, to certain limits.

The judgment of the Supreme Court, relied upon by the learned counsel for the petitioners, apart from not supporting the contention, approves the procedure of awarding marks for experience in the Government Hospitals.

We do not find any basis to entertain the petition. Writ petition is, accordingly, dismissed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Shivaji Pandey, J)

K.C.jha/-
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