

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22371 of 2014

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1. Dr. Sonu Kumar , S/o Awadh Thakur, R/o Village + P.O.- Parsa, Via- Sugauli, P.S.- Majhawaliya, District- West Champaran.
 2. Dr. Rohit Kumar, S/o -Sri Birendra Kumar Singh, R/O- Ambika nagar, Motihari, P.S.- Bangaria, District- East Champaran
 3. Dr. Devendra Kumar Rao, s/o - Shri Ramprasanna Rao, R/o - Srinagar, Narainapur, Ghat, P.S.- Bagaha, District- west Champaran.
 4. Dr. Rakesh Kumar Keshri, S/o - Sri Rambabu Singh, R/o- Pradumn-Chhapra, P.S.- Kesharia, District- East Champaran.
 5. Dr. Awinash Kumar, S/o - Ajay Kumar Singh , R/o - Gulwara Madhuban, P.S. - Madhuban, District- East Champaran.
 6. Dr.Prabhat Kumar S/o- Shukdeo Singh, R/o- Bishunpura (rambag) P.S. - Chapra Muffasil, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Govt. of Bihar , Patna.
2. The Secretary Health (Medical Education and Indigenous Medical), Govt. of Bihar, Patna.
3. Executive Director, State Health Society, Bihar, Paravar Kalyan Bhawan Sheikhpora, Patna.
4. Additional Executive Director, State Health Society, Parivar Kalyan Bhawan, Sheikhpora, patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr M.K.Mishra, Sr. Advocate
Mr. Radha Mohan Pathak
For the State : Mr. Nirbhay Kumar Singh, GP 26
For Respondents 3 & 4 : Mr K.K.Sinha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 13-05-2015

The six petitioners before the Court belong to the general category. They want a direction upon the State Health Society to de-reserve the posts meant for SC, ST, OBC, EBC etc. to facilitate their appointment in Ayurveda stream for which the examination was conducted earlier.

According to learned senior counsel, the petitioners sat in the examination and had made it to the merit list. There are vacancies. Besides, they do not have candidates to fill up those posts meant for the reserved category of people.

The petitioners stand has been belied by the position indicated in the counter affidavit of the State Health Society. The specific stand of the respondents are indicated in paragraphs 7 to 9, which are reproduced herein below for ready reference.

“7. That, the deponent respectfully states and submits, that in the year 2013 an advertisement was published vide Annexure 2 of the writ application for recruitment of (1). Ayush Doctors (Ayurveda + Homeopeth + Unani) (2). ANM and (3). Pharmacist under Rashtriya Bal Suraksha Karyakran (RBSK) of NRHM Scheme by the State Health Society, Bihar. Subsequently a corrigendum was issued vide PR No.7606/ 2013-14 regarding bifurcation of % wise seats of Ayurveda, Unani and Homeopath Doctors in which it was clearly stated, that for Ayush Doctors- Based on guidelines of the Govt. of Bihar, 50% of the post would be filled up with Ayurvedic Doctors, 30% with Homeopathic Doctors and 20% with Unani Doctors i.e. out of total 2136 vacancy for Ayush Doctors, 1068 was meant for unreserved (general category) as indicated in Recruitment application. It is stated and submitted that in terms of corrigendum issued, 50% posts would be filled up by Ayurved doctors, which means, that only 534 posts are to be filled up by Ayurvedic Stream as it also

admitted in para 10 of the writ application.

Photocopy of corrigendum is annexed as Annexure- A to this counter affidavit.

8. That it is stated and submitted that in compliance of the order dated 16.5.14 passed in CWJC No.22835 of 2013, a written test was conducted by Bihar Combined Entrance Competitive Examination (BCECEB) Patna on 17.7.14. As per written test, result was published and the petitioner no.1 was placed in the merit list at Sl.No.716, petitioner No.2 at Sl.746, Petitioner No.3 at Sl.1129, Petitioner no.4 at Sl.661 and Petitioner No.5 at Sl.No.692 and petitioner no.6 at Sl.No.884 in the list of general category, as it also explained in paragraph 7 of the writ application read with Annexure- 3, the merit list. It is stated that all the petitioners are the applicant for Ayurveda Stream.

9. That after the written test, and in terms of Annexure- 5 (Notice for conselling), the counselling (Document verification) of the candidates were conducted during the period 17.12.14 to 27.12.14. It is stated and submitted that in the said counseling, against the required vacancy for Ayurveda (534) in general stream, 20% extra candidates i.e. up to the rank 641 (534+ 20% extra) of the general category were called for counseling. It is stated and submitted, that since all the petitioners (Ayurveda under general category) have been placed below 641 rank in the merit list, hence they were not called for counseling in general category. It is further stated and submitted that selection of candidates for counseling was purely on the marks obtained in the written test.”

If what has been indicated by the respondents in the above noted paragraphs is correct then petitioners are way way below in the merit list in the general category candidates and that is the reason why they want to get an opening by seeking de-reservation of the posts meant for reserved category candidates.

No such case is made out for denying the benefit of reservation to the candidates, who have a right for consideration, merely because there is so called non-availability of candidates in the reserved category in a particular transaction. Such de-reservation will have a long term fall out upon such class contrary to their constitutional guarantee, which this Court is not inclined to allow by showing any indulgence to the petitioners.

Writ application, therefore, is dismissed. No relief of the kind can be extended.

(Ajay Kumar Tripathi, J)

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