

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14595 of 2015

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1. Durga Nand Jha Son of Jay Narayan Jha resident of village Salha
Post office Laheriasarai, District - Darbhanga
 2. Rajeev Ambastha Son of Rajniti Prasad Ambasta Room No. 101
Tapshree Apartment Road No. 11D Rajendra Nagar, Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Department of
Health and Family Welfare
2. Principal Secretary Department of Health and Family Welfare,
Government of Bihar, Patna
3. Joint Secretary Department of Health and Medical Education
Government of Bihar, Patna
4. Additional Secretary Department of Health and Medical Education
Government of Bihar, Patna
5. Principal Secretary General Administrative Department, Government
of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sujeet Kr. Sinha'
With Indu Bhushan Pandey
For the Respondent/s : Mr. Lalit Kishore, (PAAG)
With Mr. Bishwa Bibhuti Kr. Singh
AC to PAAG

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 10-12-2015

The petitioners, in the present writ application under

Article 226 of the Constitution of India, seek issuance of a writ, in the nature of writ of *certiorari*, quashing Clause (f) of Rule 6 of the Senior Resident, Tutor of Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 (hereinafter referred to as '2008 Rules'), as introduced by way of amendment in the year 2013. They have sought for a consequential declaration as regards their eligibility for appointment as Senior Resident/Tutor in Pathology (petitioner No.1), (Ear Nose & Throat) ENT (Petitioner No.2) on the ground that by virtue of the provisions as contained in Clause (f) of Rule 6 of the Rules, they have been declared overage and their candidature has not been considered.

2. From the pleadings on record and submissions advanced, we notice that the Government of Bihar, in exercise of power conferred under the proviso to Article 309 of the Constitution of India, has framed Senior Resident/Tutor of Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008, published in Bihar Gazette (Extraordinary) No. 480, dated 13.08.2008, for the purpose of regulating recruitment, appointment and promotion to the post of Senior Resident/Tutor and Bihar Medical Education Service Cadre post. Chapter III of the said Rules deals with recruitment to the posts of Senior Resident/Tutor in the Government Medical Colleges. These posts

are tenure teaching posts of four year duration. The Rules came to be amended through Senior Resident/Tutor and Bihar Medical Education Service Recruitment, Appointment and Promotion (Amendment) Rules, 2013 (hereinafter referred to as the Amendment Rules, 2013) and new sub rule (f) came to be inserted in the Rules, which reads thus:-

"(3) In the said Rules, in the 'note' of rule-6, a new following paragraph shall be added after 'proviso' to clause (e):-

"(f) The age limit for appointment on the posts of Senior Resident/Tutor shall be the same as determined by the Government (General Administration Department), from time to time, for government appointment, provided that there shall be a relaxation of 5(five) years in the age limit for members of the Bihar State Health Service Cadre."

3. The Health Department of the State Government came out with an advertisement inviting applications for appointment on the posts of Senior Resident/Tutor in different Departments including Pathology and Ear, Nose and Throat (ENT) in different Medical Colleges and Hospitals of the State. The said advertisement, dated 07.05.2015, has been brought on record by way of Annexure-6 to the writ application. It was specifically prescribed in the said advertisement that the applications were



being invited in terms of 2008 Rules as amended by Amendment Rules, 2013. The maximum age limit of a candidate to be eligible, as on 01.08.2015, was prescribed as the same, which is applicable for appointment, in the State Government services, as fixed by the General Administration Department of the State Government. It provided, however, a relaxation of five years for the members of the Bihar State Health Service Cadre. The petitioners, indisputably, did not belong to the Bihar Health Service Cadre.

4. It is also not in dispute that the Personnel and Administrative Department, Government of Bihar (now General Administration Department), through its resolution No. 1735, dated 22.06.2006, has prescribed 37 years as the maximum age for appointment to the posts under the State Government through direct recruitment.

5. Evidently, thus, for a general candidate to fulfill the eligibility criteria of upper age limit, he was required to have been born after 01.08.1978. Admittedly, while, the date of birth of the petitioner No.1 is 15.03.1977, the date of birth of the petitioner No.2 is 17.03.1977.

6. The Department of Health, having found the petitioners over age in terms of the advertisement, declared them disqualified from participating in the process of selection. Aggrieved

by this decision, the petitioners have preferred the present application challenging the very validity of Clause (f) of Rule 6 of the Rules.

7. Mr. Sujeet Kumar Sinha, learned counsel appearing on behalf of the petitioners, has submitted that prior to the amendment introduced in the year 2013, the Rules did not provide for any maximum age limit and, for the first time, the Rules came to be amended, in the year 2013, prescribing age eligibility criteria as applicable for direct recruitment under the State of Bihar. He has also submitted that since the petitioners possessed Post Graduate qualifications in their respective subjects, the upper age limit ought not to have been prescribed as applicable to the recruitment for appointment on various posts, in the State of Bihar, as prescribed by the General Administration Department of the State Government. He has further submitted that the petitioners had approached the Principal Secretary, Health Department, Government of Bihar, by filing representation seeking relaxation in upper age limit, but of no avail. It is his contention that the vacancies, prior to the present vacancies, were advertised in the year 2013 and their being no certainty of vacancies being advertised on regular basis (yearly), it would have been just and proper if the upper age limit of the petitioners was relaxed by the

Respondents by, at least, three years.

8. We do not find any merit in the submissions made, on behalf of the petitioners, for more than one reason. Firstly, a writ, in the nature of writ of *certiorari*, contrary to what the petitioners seek, cannot be issued to quash statutory rules framed under Article 309 of the Constitution of India. It is true, however, that provisions of such statutory rules can be questioned on the ground of lack of competence to frame such rules or on the ground that the rules are discriminatory or in violation of any constitutional or other binding statutory provisions. The competence of the State Government to frame rules, under Article 309 of the Constitution, of the present nature cannot be questioned and has not been questioned in the present case.

9. We do not find any element of discrimination or arbitrariness in the provisions embodied in Clause (f) of Rule (6) of the Rules, which has been quoted hereinabove. The provisions are applicable to similarly situated persons. Thirdly, the petitioners knew well that Clause 5 of the advertisement, in question, prescribed upper age limit for appointment to the post of Senior Resident/Tutor. They did not raise any objection to the said condition of the advertisement, which was in conformity with the requirement under Clause (f) of Rule 6 of the Rules. In such

circumstances, the petitioners cannot, now, question the validity of the said Rule or the terms of advertisement, for the purpose of their selection as Senior Resident/Tutor, on the basis of the advertisement aforesaid, dated 07.05.2015; more particularly, when the impugned Rules do not suffer from any such infirmity, which can make this Court declare the impugned Rules *ultra vires*..

10. The last but not the least, we notice that Clause (f) of Rule 6 provides for relaxation of 5 years in age limit for members of the Bihar State Health Service Cadre. The Rules do not provide for relaxation in the age limit for any other class of persons.

11. In our considered view, prescribing age limit or extent of relaxation to be given for a particular post are essentially matters of Government policy. Reference can be made, in this regard, to the Supreme Court's decisions in case of ***Union of India Vs. Shivbachi Rail***, reported in **(2001) 9 SCC 356** and ***Food Corporation of India Vs. Bhanu Lodh***, reported in **(2005) 3 SCC 618**. Laying down maximum age limit by referring to the age limit as prescribed by the General Administration Department of the State Government for direct recruitment prescribed for appointment to the post of Senior Resident/Tutor cannot, in the facts and circumstances of the present case be termed as arbitrary. Question of granting relaxation in upper age limit does not arise at all, there

being no such provisions under the Rules. Relaxation can be granted only if the Rules so provide.

12. We do not find any merit in this writ application for the reasons aforesaid, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I.A. Ansari, ACJ.)

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