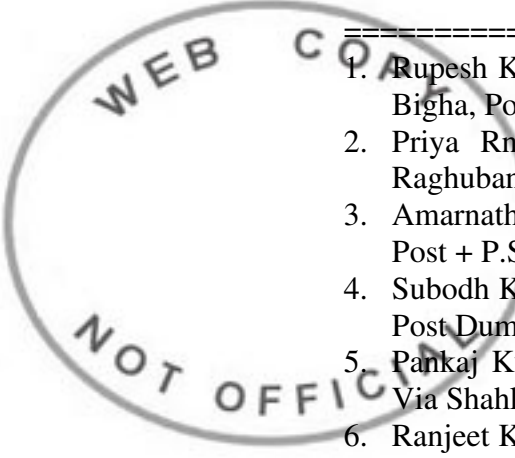


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11092 of 2016

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1. Rupesh Kumar, son of Sri Ram Praves Singh, resident of Village Raghubanshi Bigha, Post Arai, P.S. Daudnagar, District Aurangabad
 2. Priya Rnjan Kumar, son of Sri Ram Praves Singh, resident of Village Raghubanshi Bigha, Post Arai, P.S. Daudnagar, District Aurangabad
 3. Amarnath Mandal, son of Satyanarayan Mandal, resident of village Teldiha, Post + P.S. Tikapatti, District Purnea
 4. Subodh Kumar, son of Sri Nawal Kishore Prasad, resident of village Abhaypur, Post Dumarcola, P.S. + District Jamui
 5. Pankaj Kumar, son of Kuldeep Prasad Singh, resident of At + P.O. Kapsauna, Via Shahkund, District Bhagalpur
 6. Ranjeet Kumar, son of Chandra Shekhar Prasad, resident of village Lautan, Post Muraul, P.S. Sakra, District Muzaffarpur
 7. Ravi Kumar, son of Sri Bhagirath Prasad, resident of village Dharampur, Post + P.S. Hilsa, District Nalanda
 8. Mritunjay Kumar Mandal, son of Shivanand Mandal, resident of village Kharhat, Post Gitwas, P.S. Raniganj, District Araria
 9. Uma Shankar, son of Late Basant Prasad, resident of Opposite of House No. E/3, Near Panch Mandir, C.D.A. Colony, Keshari Nagar, P.S. Shastrinagar, District Patna
 10. Shyam Kumar, son of Rameshwar Das, resident of Road No. 1, Saket Bhawan, Jay Prakash Nagar, P.S. Rajiv Nagar, District Patna
 11. Rajiv Ranjan, son of Sri Naval Kishore Gupta, resident of village + Post Karubigha, P.S. Nimchak Bathani, District Gaya
 12. Lalan Kumar, son of Dinesh Mistri, resident of village + Post Bele Naubad, P.S. Beldaur, District Khagaria
 13. Raghubansh Kumar, son of Sri Dinesh Mahto, resident of village + Post Phulmalik, P.S. Sahebpur Kamal, District Begusarai
 14. Nilambuj Kumar Bharti, son of Laxmi Narayan Bharti, resident of Ward No. 9, Village Azad Naga, Post + P.S.+ District Madhepura
 15. Ved Prakash Akela, son of Nand Kishor Singh, resident of village Helha, Post Nagla, Kinjar, P.S. Khiri More, District Patna
 16. Dharmendra Kumar, son of Ram Narayan Ram, resident of village+ Post Belkhara, P.S. Karpi, Via Usri, District Arwal
 17. Sachindra Kumar, son of Nagendra Prasad Chaudhary, resident of village Uphrail, P.O. Lalganj, P.S. Khanjanchi, District Purnia
 18. Deji Kumari, daughter of Prakash Singh, resident of village Auliabad, P.O. Jhandapur, P.S. Bihpur, District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. The Director-in-Chief, Health Services, Government of Bihar, Patna
3. The Staff Selection Commission through its Secretary, Post Veterinary College, Patna-14
4. The Chairman, Bihar Staff Selection Commission, Post Veterinary College, Patna-14
5. The Secretary, Bihar Staff Selection Commission, Post Veterinary College, Patna-14

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Chakrapani, Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Madhuresh Singh, Advocate
For the State : Mr. Anshuman Singh, AC to PAAG-1
For the Commission : Mr. Kamla Kant Upadhyay, Advocate
Mr. Chandra Bhushan Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 05-09-2016

By this writ petition the challenge is to the decision of the Bihar Staff Selection Commission (hereinafter referred to as the Commission) by which the petitioners who hold B.Sc. Hons. in Medical X-ray Technology from Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna, (hereinafter referred to as the Institute) have been held to be ineligible for the post of X-ray Technicians. A counter affidavit has been filed by the Commission, which is on record.

We have heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Commission and with their consent are disposing of this writ petition at this stage itself.

The facts are not in dispute. All the 18 petitioners are graduate with Hons. in Medical X-ray Technology from the Institute. It is an autonomous superspeciality Institute of the State



Government. It appears that for the Government hospitals and medical colleges, State Government had formed a cadre known as Bihar X-ray Technicians cadre for which Bihar X-ray Technician Cadre Rules, 2014 were enacted (Annexure-1 to the writ petition). The cadre rules and in particular Rule 6 provides for qualification of X-ray Technicians. Rule 6(1) insofar as relevant is as follows :

“6. Qualification.-- (1) For appointment by direct recruitment to the basic grade post, minimum educational qualification shall be Intermediate/ 10+2 (Physics, Chemistry, Biology with English) pass. In addition to this, it shall be necessary to have passed Diploma in Medical Radiography from a government recognised institution.”

Further Rule 7(2) provides for the recruitment process and it recognizes additional marks for higher degree of B.Sc., M.Sc. This course of B.Sc. Hons. is available to Intermediate in science pass students. Rule 7(2) is as follows :

“7(2) In light of requisition, the Commission shall invite applications by advertising vacancies and prepare merit list on following basis :-

(a) For marks obtained in

Intermediate/10+2 -----25 marks

(b) For marks obtained in higher degree

(B.Sc/M.Sc) -----10 marks

(c) For marks obtained in Diploma in

Medical Radiography course examination-25marks

(d) For experience in Government

Hospitals of Bihar State

(5 marks per year, maximum 25 marks)- 25 marks

(e) For interview-

15 marks

Total 100 marks”

It appears that on or about 27.04.2016 an advertisement was issued by the Commission for recruitment of X-ray Technicians, the total vacancies being 215. The minimum qualification as advertised was Intermediate with science and technical qualification required was diploma in X-ray Technician and Medical Radiography from Government recognized institution. The petitioners also applied and were selected but at the stage of counseling their candidature were cancelled on the ground that though they were Hons. graduate in Medical Radiology they were not diploma holders as X-ray Technicians and as such they were not eligible for the post.

Counter affidavit has been filed by the Commission stating that as the educational qualification requires as



stipulated by the Requisitioning Department was diploma in X-ray Technology and the petitioners having a higher qualification of B.Sc. Hons. in Medical Radiology and not having diploma, were ineligible. The Commission could not alter the basic requirement. They have written to the State for clarification but no clarification has yet been received. There has been no counter affidavit by the State.

We have considered the matter and in our view the situation being of a serious nature, concerns us. A person who is Hons. graduate in X-ray Technology and Medical Radiology is said to be ineligible for a post which requires only a diploma in X-ray Technology. It is not that the petitioners are Hons. graduate as aforesaid from any fly by night institution. They are Hons. graduate from autonomous Government Superspeciality Institution, the Indira Gandhi Institute of Medical Sciences. A diploma course can unhesitantly and undoubtedly be held to be a much inferior course than graduate, and much less graduate Hons. Apparently, even the Commission entertained the applications of the petitioners till the very final stage when someone somehow managed to pull the plug. This can only happen in Bihar. We may also notice that not only the cadre rules dealing with the procedure of recruitment but also the advertisement issued by the Commission clearly shows that additional marks are given for graduates and postgraduates, even for this



particular post. We have serious doubts about the bona fides of the persons who took the decision on behalf of the Commission in this regard, who even ignored this part of the cadre rules and their own advertisement. It is a serious matter which should concern the State Government and the Chairman of the Commission.

In view of the facts aforesaid, we have no option but to hold that the petitioners have been wrongly discriminated and have wrongly been held to be ineligible. They are better qualified and better suited than the diploma holders, for the job in question. Thus, the decision of the Commission to hold them ineligible for the post in question, as advertised vide Advertisement No. 03010115, suffers from malice as has been noticed by the Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India and another since reported in AIR 1979 SC 49, relevant part of paragraph 5 is quoted hereunder :

“---Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.”

The decision is, thus, set aside. The Commission is directed to proceed with the selection process without the exclusion of the petitioners. The stay granted earlier would, thus, stand vacated.

The petitioners cannot be put to any disadvantageous position because of their educational qualification. The writ petition is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

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