

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10912 of 2014

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1. Prem Prabhakar, S/o Indradeo Singh, Resident of Village- Boknarikhurd,
P.O.- Makhdumpur, District- Jehanabad
2. Kumar Rajeev Suman, S/o Late Vyas Nandan Rai, Resident of Village-
Bhirha, P.S.- Rosera, District- Samastipur

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Old Secretariat, Patna
2. The Principal Secretary, General Administration Department, Govt. of
Bihar, Old Secretariat, Patna
3. The Principal Secretary, Department of Health, Govt. of Bihar, Old
Secretariat, Patna
4. The State Health Society, through its Executive Director, Sheikhpura,
Patna
5. The Secretary Health cum Executive Director, State Health Society,
Bihar, Parivar Kalyan Bhawan, Patna
6. The State Programme Officer, State Health Society, Bihar, Parivar
Kalyan Bhawan, Patna
7. Dr. Sanjeev Kumar, C/o Late Satyendra Prasad Singh, resident of Vill-
Murvadih, P.O. Murara, Biharsharif, Nalanda, presently posted Ayush
Homeo Doctor at Saharsa
8. Dr. Chandrashekhar Singh C/o Birendra Singh, resident of Vill- Bhabua,
Chhwani Muhalla-9 Ghoori Babu Lane, Kaimur presently posted Ayush
Ayurvedic Doctor at Madhepura
9. Dr. Mohd. Akram C/o Mohd. Ilyas, resident of House No.116, Road-3/D,
At & P.O. New Karimganj, Gaya, presently posted Ayush Ayurvedic
Doctor at Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chakrapani, Advocate
Mr. Dipak Kumar, Advocate
For the Respondent/s : Mr. Kishore Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
CAV ORDER

14 01-08-2016 The petitioners seek quashing of the memo No.5031, dated
3.6.2014, by which the respondent No.6 has cancelled their
appointments made on contract basis.

2. As the case has a chequered history, it would be necessary



to notice the facts of the case, in brief. (i) The Department of Health, Government of Bihar, published advertisement inviting applications from eligible candidates for appointment to the post of Ayush Doctors, on contract basis, which was subject to extension. There were three categories of posts of Ayush Doctors, namely, Ayurvedic Aysh Doctors, Homeopathic Ayush Doctors and Unani Ayush Doctors. The numbers of vacancies for each of three categories of posts of Ayush Doctors as also the reservation quota for each category of candidates, were duly mentioned in the advertisement (Annexure-1).

(ii) Pursuant to advertisement, the petitioners, private respondents and many others applied. After written test, merit panels for each category of Ayush Doctors were prepared separately for the appointments to their respective categories. After completion of selection process, a total of 1384 Doctors were appointed on 5.8.2010 as per reservation policy which is referred as first list.

(iii) Out of 1384 Ayush Doctors, 40 Ayurvedic, 16 Homeopathic and 7 Unani Doctors, totaling 63, did not give joining. Against the seats falling vacant, the Bihar State Health Society, vide memo No.29442, dated 17.8.2011 selected and appointed 63 Ayush Doctors against the vacancies arising out of

equal number of Ayush Doctors in the three streams, which is referred as second list. To be specific, out of 40 Ayush Doctors appointed in the second list, 26 were from general category. Out of 16 Homeo Ayush Doctors, 10 were from general category, and out of 6 Unani doctors, 3 were from the general category.

(iv) In the meantime, one Dr. Kameshwar Prasad Singh challenged the appointments of 63 Ayush Doctors contained in letter No.29442, dated 17.8.2011, on the ground of non-observance of the reservation policy. On 19.3.2012, a bench of this Court disposed of the writ application with a direction to the Executive Director, Bihar State Health Society to dispose of the representation of the petitioner in accordance with law.

(v) On remand of the matter and on the basis of opinion of General Administrative Department, the Secretary, Health-cum-Executive Director, Bihar State Health Society, vide his order, dated 22.11.2012 cancelled the appointment of second list of Ayush Doctors, contained in letter No.29442, dated 17.8.2011.

(vi) Being aggrieved by order, dated 22.11.2012 (Annexure-5) cancelling the appointment of second list of Ayush Doctors contained in memo No.29442, dated 17.8.2011, petitioner No.1 and others moved this Court in C.W.J.C. No.1226 of 2013. It is relevant to state herein that another writ application, being



C.W.J.C. No.23190 of 2012 was filed against the same order, dated 22.11.2012 by some more Ayush Doctors, who were also appointed from the second list contained in letter dated 17.8.2011. Both C.W.J.C. No.2391 of 2012 and C.W.J.C. No.1226 of 2013 were allowed vide order, dated 3.7.2013 and 14.2.2014 respectively and memo No.9572, dated 22.11.2012 of the Secretary-cum-Executive Director, Bihar State Health Society annulling the appointments made vide letter, dated 17.8.2011 (second list) was quashed, on the ground that no opportunity of hearing was given to the affected candidates before cancelling their services.

(vii) On remand of the matter, a fresh show cause notice was given to all the terminated candidates, some of whom submitted their show cause reply. After considering the show cause reply, the Bihar State Health Society vide its memo No.5031, dated 3.6.2014 quashed the termination of General Category Candidate on recommendation of General Administrative Department, as the selection was not as per the reservation policy and appointed reserved category candidates in place of the petitioners. The order, dated 3.6.2014 is impugned in this writ application.

3. The petitioners in this writ application are all Ayush



Homeopathic Doctors and as such the writ application is confined to the cancellation of the selection and appointment of Ayush Homeopathic Doctors. Their case is that they were appointed vide letter, dated 17.8.2011, as per the merit position, on account of non-joining of 16 Ayush Homeopathic Doctors, out of which 10 belonged to General category. They contend that in the general category of Homeopathic Ayush Doctors, not only the general category candidates but also the reserved category candidates who had secured higher marks were appointed vide letter, dated 5.8.2010, as contained in memo No.18951 (first list). However, 40 Ayush Ayurvedic Doctors, 16 Ayush Homeopathic Doctors and 6 Ayush Unani Doctors did not join. Out of 40 Ayush Ayurvedic Doctors, 26 of them were from general category. Similarly, out of 16 Ayush Homeopathic Doctors, 10 were from general category and out of 10 Ayush Unani Doctors, 3 were from general category. The petitioners contend that second list, dated 17.8.2011 was prepared taking into consideration the number of vacancies remaining vacant category wise from first list on account of non-joining of 63 Ayush Doctors, who were appointed in terms of reservation policy.

4(a). A counter affidavit has been filed on behalf of the Bihar State Health Society, the Government as well as private



respondents. The case of Dr. Kameshwar Prasad Singh, who challenged the appointments of general category candidates selected under second list, before the Bihar State Health Society was that the vacancies arising on account of non-joining of candidates, should not have been filled up by the respective candidates of categories concerned, but should have been considered as per the reservation policy. In other words, if 10 candidates from general category and 6 candidates from reserved category did not choose to join, the vacancy should have been filled up as per existing reservation policy. Therefore, the seats falling vacant on account of non-joining of 16 candidates, at least 8 should have been filled up from reserved category candidate on 50% reserved quota basis.

4(b) It was further case of Dr. Kameshwar Prasad Singh that such reserved candidates, who got appointed in various reserved categories in the first list, now again be adjusted according to his general merit list at their respective position in general merit list (according to general rank) and the resultant reserved categories vacancy in reserved quota should be filled up by fresh reserved category's waiting list candidates who could not get appointed. The contention of Dr. Kameshwar Prasad Singh, who belonged to reserved category, was accepted both by the

General Administration Department as well as Bihar State Health Society. The stand of the State and Bihar State Health Society has been adopted by the private respondents too. Paragraph 7 of the counter affidavit filed by the Bihar State Health Society is quoted herein below for easy reference:

“7. That in CWJC No.4969/2012, Dr. Kameshwar Pd. Singh, challenged the 2nd list for observance of Reservation Policy and vide order dated 19.03.2012 of the Hon’ble High Court, Patna, the petitioner then represented the State Health Society to revise the 2nd list on the basis of Reservation Policy. In this representation, Dr. Kameshwar Pd. Singh had stated that in second list, the selection of general candidates in general category from waiting list of general category is not according to reservation policy. It was alleged, that such reserved candidates, who got appointed in various reserved categories in the first list, should now again be adjusted according to his general merit list at their respective position in general merit list (according to general rank) and the resultant reserved categories vacancy in reserved quota should be filled up by fresh reserved category’s waiting list candidates who could not get appointed”.

5. In my view, the General Administration Department as well as Bihar State Health Society erred in law in accepting the logic canvassed by the private respondent Dr. Kameshwar Pd. Singh. The respondents failed to consider that the selection and appointment made vide memo No.29442, dated 17.8.2011, commonly called ‘second list’, was in continuance of the selection process inviting applications for filling up 1384 Ayush Doctors



contained in Annexure-1. The second list was prepared to fill up the vacancies arising on account of non-joining of 63 Ayush Doctors, 16 of whom belonged to Ayush Homeopathic category, with which we are concerned in this writ application. It is relevant to state that out of 16 Ayush Homeopathic Doctors, who did not join, 10 were from the general category and 6 were from the reserved category. It is not the case, where 16 numbers of Ayush Homeopathic Doctors left the service after joining. It is a case where a certain number of selected candidates did not join and the vacancies so falling vacant were being filled by select list contained in letter, dated 17.8.2011 from the merit panel of respective categories against respective vacancies of such categories of candidates. For instance, if 10 of the general category candidates and 6 of the reserved category candidate did not join, the vacancy ought to be filled up from their respective merit list and not on the basis of reservation policy, as it is not the case of fresh selection. The panel already existed as per the reservation policy. Further more, if meritorious reserved candidates are adjusted against the reserved category vacancy, with respect to higher preferences and the seat vacated by them in general category are further allowed to reserved category candidate, the aggregate reservation would exceed 50% of all



available position which is not permissible in law in view of the law laid down by the Constitution Bench of Hon'ble Apex Court in the case of ***Union of India vs. Ramesh Ram, reported in (2010)7 SCC 23***, following the principles laid down by the Hon'ble Apex Court in respect of reservation quota in the case of ***Indra Sawhmy vs Union of India, reported in 1992 Suppl. (3) SCC 217***. Paragraph 39 of the order of the Apex Court in the case of ***Union of India vs. Ramesh Ram*** (supra) is quoted as under:

“39. A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in Indra Sawhney v. Union of India. If MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available posts”.

6. In view of the discussions made in the foregoing paragraphs and keeping in view the law laid down, the impugned order, permitting such reserved category candidates, who got appointed in various reserved category in the first list, ought not to have been adjusted according to general merit list at their respective position, and the resultant reserved category vacancy in

reserved quota should not have been filled up by fresh reserved category waiting list candidate, who could not get appointed earlier. I further hold that the respondents by the impugned order, dated 3.6.2014, erred in not filling up the vacancies on account of non-joining of general category candidate from the same category from the waiting list.

7. In the result, this writ application succeeds. The impugned order, cancelling the appointment of Ayush Homeopathic Doctors, so far as petitioners are concerned, vide memo No.5031, dated 3.6.2014, are set aside and are directed to be reinstated in service. The last two of the reserved category candidates, who were appointed in their place, would have to vacate the seats to accommodate the petitioners. However, these candidates who would gave way to the petitioners, if possible, be accommodated against existing vacancies.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

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