

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5795 of 2013

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1. Dr. (Smt.) Chhabi Sahay W/O Dr. Radha Mohan Prasad R/O K-118, Hanuman Nagar, P.S.- Patrakar Nagar, Kankarbagh, Patna
 2. Dr. Anis Chandra Mishra S/O Late Kharg Nath Mishra R/O B-402, Arvind Lok Apartment, Hanuman Nagar, P.S.- Patrakar Nagar, Kankarbagh, Patna
 3. Dr. (Smt.) Tripti Choudhury W/O Sri Swapan Choudhury R/O F/6, Sapna Apartment, Naya Tola, P.S.-Pirbahore, Town And District- Patna
 4. Dr. Prabhat Shankar S/O Late Dr. Tej Bahadur Gupta R/O Road No. 7, Rajendra Nagar, P.S.Kadam Kuan, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Labour Resources Department, Govt. Of Bihar, Patna
3. The Principal Secretary Finance Department, Govt. Of Bihar, Patna
4. The Principal Secretary General Administration Department, Govt. Of Bihar, Patna
5. The Deputy Secretary Labour Resources Department, Govt. Of Bihar, Patna
6. The Director, Medical Services Employees State Insurance Scheme, Labour Resources Department, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-24
Mr. Arjun Prasad, AC to SC-24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 02-05-2016

Heard learned counsel for the parties.

In this case, the petitioner has challenged the memo no. 313 dated 19.7.2002, raising a grievance that the State Government has wrongly treated the total strength of doctor is 42 and, on that basis, they have categorized the feeder post, Junior Selection Grade 20% of the total sanctioned post, Senior Selection Grade 12.5% of the total sanctioned post and Super Time Scale 2.5% of the total sanctioned post and divided the

post in the following manner:-



28 posts	- Original Selection Grade
8.4 or 8	– Junior Selection Grade
5.25 or 5 posts	– Senior Selection Grade
1.05 or 1	– Super Time Scale

A grievance was raised by the petitioners that the division should not have been done on the working strength but the division is to be done on the total sanction of the posts.

This Court was not satisfied with the counter affidavit of the State and passed an order on 25.2.2016, which reads as follows:-

“In the present case, all the petitioners have retired except petitioner no. 3. They were appointed as Doctor in a separate cadre which was constituted in the year 1981 for the purposes of catering the need employees covered under E.S.I. Act.

The cadre was called Medical Officer under the E.S.I. Act. After the implementation of the 4th Pay Revision Commission, this cadre was grouped in following manner, cadre was divided 20% for the Junior Selection Grade, 12.5% for Senior Selection Grade and 2.5% for Super Selection Grade.

As per the 4th Pay Commission Report which has been reflected in paragraph 8 of the counter affidavit from where it is apparently clear that there will be a division on the basis of cadre strength, not on the basis of working strength. When an explanation was sought from the Finance Department with reference to 42 Doctors are working against the sanctioned strength of 160, in what manner division would be done with respect to Junior Selection Grade, Senior Selection Grade and Super Selection Grade.



The Finance Department has given its opinion, vide letter no. 313, dated 19th July 2002, clarified that if the gap is a wider in sanctioned strength and the working strength, the categorization will be made on the basis of working strength, but if the gap is nearby then the division will be made on the basis of cadre strength but, this Court is feeling surprise that when the P.R.C. has directed for the cadre strength, can the Finance Department, by its letter dated 19th July 2002, modify the report that was accepted by the State Government and whether this principle has been applied to only this cadre or has been applicable to the other cadre i.e. either in the Labour Department or in other department in the State of Bihar.

The counsel for the petitioners has pointed out that from the year 1987 the sanction strength was enhanced from time to time as well as large number of doctors such as 190 were appointed as Medical Officer under this cadre.

Let the Secretary, Labour Department file an affidavit about the adoption of principle of division of cadre on the basis of working strength within four weeks. Put up this case after four weeks."

In pursuance of this direction, the Finance Department gave a new thought, gave its opinion that for the period from 30.12.1981 to 9.11.2084, the total sanctioned strength of doctor would be 256 and from 1.4.1981 to 1.3.1989 division of the cadre will be on the strength of 256 and not on the 42 posts. In the counter affidavit, in paragraph no.8 it has been stated that after the order of this Court, a fresh opinion was given on 25.4.2016 considering the recommendation of the 4th Pay Revision Committee and stated that the number of Selection Grade posts will be worked out by conversion of the existing sanctioned posts in the cadre i.e.

256 posts that too from 1.4.1981 and 1.3.1989 to 31.12.1995 and in paragraph no.9 it has been stated that in pursuance of the said opinion, amended notification will be issued by the Department and accordingly promotional benefit would be given to the petitioners.

In view of the statement made in the counter affidavit, the letter dated 19.7.2002 lost its relevance and will remain inoperative till a fresh notification is issued by the State Government as has been stated in paragraph no.9 of the supplementary counter affidavit.

This court hopes and believes that the respondents will act swiftly and take corrective action and issue necessary notification without unnecessary delay.

Let the State should issue a correct notification within a period of three months from the date of receipt/production of a copy of this order.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.5.2016
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