

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18068 of 2015

Dr. Hari Govind Prasad, Son of Sita Ram Das, Resident of Village- Narepur,
Po+P.S -Bachhwara, District -Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department ,
Government of Bihar Patna.
2. The Bihar Public Service Commission, Bailey Raod, Patna through its Secretary.
null null
3. The Chairman, Bihar Public Service Commission, Bailey Raod, Patna
4. The Secretary, Bihar Public Service Commission, Bailey Raod, Patna
5. The Joint Secretary-cum-Examination Controller, Bihar Public Service
Commission, Bailey Raod, Patna
6. Abhijeet Das through The Bihar Public Service Commission, Bailey Raod, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 18033 of 2015

Dr. Renu Singh, Wife of Niranjana Kumar Singh, Resident of village - Bisartalab,
Near IMA Hall, P.S. Civil Line, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna
2. The Bihar Public Service Commission, Bailey Road, Patna through the Secretary
3. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
5. The Joint Secretary - Cum - Examination Controller, Bihar Public Service
Commission, Bailey Road, Patna
6. Mini Kumari, through Bihar Public Service Commission, Bailey Road, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 767 of 2016

1. Dr. Sanaul Mustafa Ansari, S/O- Phool Mohammed Ansari, R/o Village-
Fakhruddinpur, P.O- Dindayalpur, P.S.- G.B. Nagar (Tarwara), District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.

3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

4. The Joint Secretary-Cum- Examination Controller, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19669 of 2015

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Dr. Sudhir Kumar, son of Sri Subhash Prasad, R/o village- - Bhelwa, P.O. + P.S. – Chauradano, District – East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

2. The Principal Secretary, Health Department, Government of Bihar, Patna.

3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

4. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18251 of 2015

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Arun Kumar Ajay, Son of Ram Chandra Yadav, Resident of Mohalla - Chanakya Nagar, Kumhrar, P.S. - Agamkuan, District - Patna, at present posted on contractual basis at P.H.C., Pandarak, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

2. The Principal Secretary, Health Department, Government of Bihar, Patna.

3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

4. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 18068 of 2015)

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Pranav Kumar

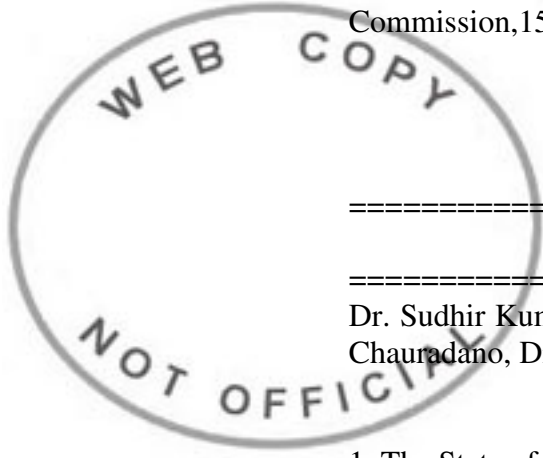
For the Respondent/s : Mr. Arvind Kumar No. 1- SC13

(In CWJC No. 18033 of 2015)

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Pranav Kumar

For the Respondent/s : Mr. Prabhat Kumar Singh- SC12

(In CWJC No. 767 of 2016)



For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar

For the Respondent/s : Mr. GP6- Prashant Pratap

For the B.P.S.C.: Mr. Sanjay Pandey

(In CWJC No. 19669 of 2015)

For the Petitioner/s : Mr. Rajesh Kumar

For the Respondent/s : Mr. Smt. Geeta Kumari- GP28

(In CWJC No. 18251 of 2015)

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Rajesh Kumar

For the Respondent/s : Mr. T. N. Ambastha- AC to GP14

For the B.P.S.C.: Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

C.A.V. JUDGMENT

Date: 30-03-2016

All the five writ applications were heard at one point of time or other in admission and order reserved and are now being dealt with together, because they all have a common grievance against the Bihar Public Service Commission (for brevity "B.P.S.C.") that the B.P.S.C. has arbitrarily omitted their name from the final merit-list for extraneous reasons, therefore, a mandamus is required to be issued to not only declare them as having the requisite merit position as well as to appoint them on the post of Medical Officer.

The origin of the present dispute relates to the publication of an Advertisement No. 15 of 2014, dated 18.07.2014 by the B.P.S.C. to fill up posts of Medical Officers in the State of Bihar. A requisition was sent by the Department of Health against 2301 vacancies under various reservation categories. The advertisement is Annexure-1 to the writ application. It is the case of these petitioners that they performed well in the interview and they do have the requisite merit position to be appointed, but B.P.S.C. has

rejected the candidature of not only these petitioners but 178 other candidates on 12.10.2015 on the ground that these candidates have failed to furnish the original certificates varying from M.B.B.S., matriculation certification, caste certificate etc. etc. not only at the time of the interview but even within the two extended dates given to such candidates through a public notice and advertisement.

Counsels representing the various petitioners urged at the bar that in response to the advertisement the candidates gave the declaration in the application of the various kinds of certificates, which they had annexed. They did not suppress any fact and based on such a declaration B.P.S.C. called them for interview. At the time of interview they were not compelled to give any undertaking as was done with regard to some of the candidates and these petitioners, therefore, were sanguine that all has been well with regard to their candidature and certification and, therefore, B.P.S.C. should be estopped from disqualifying them on the ground of non-production of original certificate of one kind or the other.

Though counter affidavit has been filed in all the writ applications, but for the purpose of convenience, the counter affidavit filed in the case of Dr. Hari Govind Prasad (C.W.J.C. No. 18068 of 2015) has been utilized for taking note of the stand of B.P.S.C.

Counsel representing B.P.S.C. has drawn attention of the Court to Clause 8 (ii) of the advertisement, where a clear and



specific instruction has been given to all the candidates as to the kind of certificates, which were required to be annexed and then produced in original at the time of interview. Attention of the Court was also drawn to the said requirement, provided in the interview letter issued to each and every candidate. In addition to that, B.P.S.C. had issued two public notices, dated 16.07.2015 and 20th of August, 2015, directing the candidates to get their originals verified. The two notices have been annexed as Annexure-D series. It is only there after and on failure on the part of the candidates to get their original verified of one kind or the other that the entire B.P.S.C. held a meeting on 30th of September, 2015 and deliberated on the various issues relating to such selection and recommendation. Extract of the meeting dated 30th of September, 2015 is Annexure-E series. A look at the said decision itself would indicate that there are 178 candidates, which include these petitioners, whose candidature was rejected and the reason or their position was uploaded on the web-site. Names of these petitioners find mention in the list of 178.

It is the stand of counsel for B.P.S.C., therefore, that these petitioners cannot draw advantage of their own omission. These appointments is being made at a senior enough position under the State of Bihar and since all these petitioners or such candidates are well qualified and have atleast an M.B.B.S. degree, they are expected to read, know and carry out the direction issued



by the B.P.S.C. from time to time. They cannot be given the indulgence, which may be extended to a Class-IV employee in matters of such selection. Each and every certificate has due relevance with regard to the said selection. The details of which have been provided in the counter affidavit and their verification in original for such appointment under the State was mandatory as per the advertisement, the instructions given in the interview letter as well as the two public notifications asking the candidates to get their original verified. They cannot hide or plead a hyper technicality that since no undertaking was taken from them with regard to verification of one certificate or the other there should be a presumption of them being in order or that the B.P.S.C. condoned such non-production.

Counsel for B.P.S.C. further informs the Court that the final result has been published on 12.10.2015. B.P.S.C. made recommendation of the selected candidates on 28.12.2015. Counselling of such candidates was held between 15th to 22nd of January, 2016 and appointments have already been made on the vacancies existing under various categories of reservation. The exercise has been completed and therefore, the settled position cannot be unsettled and that too for reasons attributable to the petitioners and not to B.P.S.C.

Counsel further emphasizes that the B.P.S.C. was indulgent enough by calling all the candidates on the basis of the declaration made in their application form, with a clear



understanding, which will be evident by the various notices as well as the instructions available in the advertisement and the call letter etc. as to what was mandated and required at the time of interview. But if despite this indulgence as well as the time granted to such candidates the candidates failed to avail the opportunity, the B.P.S.C. was left with no option but to identify such candidates and reject their candidature by indicating the reasons for such rejection by notifying the same on the website of B.P.S.C.

On the various plea taken by the counsels for the petitioners as to how B.P.S.C. cannot go back from the position that despite the short fall or inadequacy if these petitioners were called for the interview a right has been created in their favour and B.P.S.C. should thereafter be compelled to recommend their case for appointment, counsel for B.P.S.C. has drawn the attention of the Court to a decision rendered by the Hon'ble Supreme Court which is the case of T. Jayakumar versus A. Gopu and another, reported in 2008 (ix)SCC403. The ratio of the said decision has been crystallized in paragraph 12 to 15, which reads as under.

12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that

alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. (emphasis mine)

13. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case.

14. We are equally unable to appreciate the approach of the High Court. In the facts of the case it cannot be said that the decision of the authority concerned not to accept any of the two applications of respondent 1, the first being invalid for want of signature and the other being beyond time, was totally unreasonable and arbitrary. As a matter of fact the High Court has not come to any such finding. And yet the High Court observed that the second application ought to have been treated as 'part and parcel' of the first application and thus substituted its own view in the matter for the view taken by the respondent authority. Such an approach might have been permissible for the departmental appellate authority (provided there was one) but it was plainly beyond the scope of judicial review.

15. In the facts of the case we are satisfied that the authority concerned had not exercised its discretion unreasonably and arbitrarily in rejecting both the applications submitted by respondent 1 and any interference in the matter was hardly called for by the Tribunal or the High Court.



Having heard the contentions of the counsels for the petitioners and the stand taken by the B.P.S.C., the Court is of the considered opinion that the ratio laid down by the Hon'ble Supreme Court in T. Jayakumar (supra) is a complete answer to the submissions made at the bar on behalf of the petitioners. There is no element of surprise nor is there any element of arbitrariness as to the reasons for rejection of the candidature of the petitioners. All the petitioners are well read and educated persons and it is expected that they will exercise due diligence in following the instructions as well as direction issued by the B.P.S.C. with regard to verification of the certificates in original since these are substantive appointments under the State. B.P.S.C. gave adequate opportunity not once but twice over, but still if there is failure on the part of the candidates then merely because they were called for interview and given a chance to take part in the selection process that by itself does not mean that the candidates will not be held ineligible for selection at a later stage once the defect in the application comes to light and made known publicly to one and all.

Further keeping in mind that all these appointments have already been made, therefore, the Court would not like to unsettle the settled position and interfere with the right created in favour of any selected candidates, for failure on the part of these petitioners to follow the instructions and directions within the time frame.

There is also a redeeming factor for these petitioners in

the sense that more advertisement is in the pipeline for filling up the posts of Medical Officers and B.P.S.C. has received the requisition in this regard from the State. This fact has been made known to the Court by the counsel for B.P.S.C. In view of the above this Court only hopes that all such candidates who failed to make it in the last recommendation will be careful enough now to ensure that all the requirements this time is taken care of.

The writ applications, therefore, are dismissed, as no case for a mandamus upon the respondents have been made out for appointment of these petitioners on the post of a Medical Officers, under the State of Bihar.

(Ajay Kumar Tripathi, J)

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