

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7963 of 2014

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1. Sudhanshu Prasad Singh S/O Sri Ramdhan Prasad Singh resident of Mohalla:- Mill Tola; P.S.:- Naugachhiya Town; District:- Bhagalpur
 2. Alok Kumar S/O Sri Umesh Kumar Mahesh resident of Village:- Haribanshpur; P.O.:- Warispur; P.S.:- Bhagwanpur; District:- Vaishali. At Present C/O Prakash Jewellers; Kachchi-Pakki Road, Atardah; Muzaffarpur
 3. Anil Kumar Anal S/O Sri Mahendra Prasad Yadav resident of Village:- Sondiha; P.O.:- Chutiya P.S.:- Sambhuganj; District:- Banka
 4. Arvind Kumar S/O Sri Dharmeshwar Sah resident of Village:- Harpur Banka; P.O.:- Baank; P.S. + District:- Munger

.... Petitioners

Versus

1. The State of Bihar through the Commissioner-Cum-Secretary Department of Health and Family Welfare, Govt. of Bihar, Patna
2. The Bihar State Health Society through its Secretary
3. The Nodal Officer, I.A.S. Sangh Bhawan, Paramedical Kosang, near Airport, Post- P.V.C.C., Patna- 14
4. The Principal Director, Health Services, Govt. of Bihar, Patna
5. The Dy-Director, Health Services, Govt. of Bihar, Patna
6. The Controller of Examination, Health Services, Govt. of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Abhimanyu Sharma, Advocate Ms. Prakritita Sharma, Advocate
For the State	:	Mr. Mrigendra Kumar, AC to GA4

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 15-12-2016

The four petitioners are seeking a direction upon the respondents to appoint them on the post of Laboratory Technician from the select list prepared by the respondents, which was done after completion of the written test and interview. A list of 680 candidates was recommended. Persons even below the petitioners came to be appointed but these petitioners were ignored, as is alleged. The petitioners also seek quashing of Annexure-7 dated 02.12.2013 by virtue of which the petitioners along with others had been called for appearing in an



eligibility test to be held again, which is contrary to the terms and conditions of the original advertisement.

2. Basic facts are not under dispute that an advertisement was issued for appointment of Operation Theatre Assistants and Laboratory Technicians on contract basis. This was in the year 2008. The details of eligibility etc. is available from reading of Annexure-1.

3. After completion of the written test and interview, a final select list was prepared consisting of 680 candidates, which included the name of these petitioners. The list was sent to the Director, Health Services for hiring of the candidates so selected on contract. Only 329 candidates came to be engaged vide letter dated 29.06.2010. Even though vacancies subsisted but these petitioners were not appointed for quite sometime. Then a Notification No.1604(4) dated 06.11.2012 was issued, which included a list of 62 candidates. Even though verification of the certificates etc. of the petitioners was made but no engagement was made. Same kind of deliberation was done by issuance of a second list of 25 candidates on 31.05.2013.

4. Finally a list of panel was notified on 02.12.2013 where name of these petitioners did figure, a copy of which is Annexure-8. By virtue of Annexure-8, it seems that those candidates including these petitioners were directed to appear in an eligibility test again, which is contrary to the terms and conditions of the advertisement. The petitioners plead discrimination because the earlier appointments were



made on the basis of the written test and interview but why these petitioners were being made to undergo an eligibility test is not very clear.

5. The Court directed the Director-in-Chief, Health Services to appear and file a counter affidavit and also produce the original records to verify the allegations as well as the reason for the methodology followed with regard to the said exercise for hiring on contract. Counter affidavit has been filed.

6. The sum essence of the stand taken in the counter affidavit is that pursuant to the advertisement published in the year 2008, a panel of 680 selected candidates was prepared for the post of Operation Theatre Assistants and Laboratory Assistants. Only 604 applicants could be appointed. 76 applicants could not be appointed from the panel as the panel had expired. The said panel was however, revived by the order of the Health Minister on 04.06.2011. While the process of appointment was initiated the Hon'ble High Court passed an order on 22.11.2012 in CWJC No.16227 of 2010 staying the entire process of appointment from the said panel. Pursuant to the said order, the General Administration Department also imposed a ban on the contractual appointment. This ban could be vacated only after an order dated 11.01.2013 was passed by the High Court. Thereafter on 21.05.2013, the General Administration Department withdrew the order of ban imposed earlier.



7. After the withdrawal of the ban on contractual appointments, the respondent authorities proceeded for appointment of the rest of 76 applicants from the old panel. However, much time had elapsed between the preparation and appointment earlier made and the exercise, which was initiated in the later part of the year 2013. Since these appointments were vital for the life and limb of patients who had to be attended to by the Operation Theatre Assistants or Laboratory Technicians, a Three Member Committee was constituted for a fresh interview and skill test. All the candidates were informed and were directed to appear. None of them raised any objection. They underwent the exercise. The Three Member Committee found only 38 candidates worthy of recommendation for appointment out of the 76 candidates and since these petitioners had performed very poorly, details of their performance has been annexed as Annexure-A to the counter affidavit, they were not recommended for hiring on contract. It is for this reason that the petitioners have filed the writ application.

8. Counsel representing the State, therefore, raises a first objection that the petitioners now cannot raise any objection after having participated and having failed to qualify. The reason for delay or non-appointment of the 76 candidates have been provided and there was no mischief intended behind non-recommendation. Since the engagement of these candidates as the Laboratory Technicians or Operation Theatre Assistants are vital to provide quality medical service to the patients



whose life and limb depend upon their inputs and assistance and the long gap between the initial selection and the second round of deliberation for such hiring and contract had elapsed, it was in public interest that the respondent authorities decided to test their skill and knowledge if they still retained so, after lapse of the initial deliberation made in the year 2008 and the re-exercise being done in the year 2013.

9. The rational and explanation offered by the respondents with regard to the status of these petitioners, therefore, cannot be said to be irrational or motivated. In the opinion of the Court, if these petitioners had participated in the process after re-initiation of the exercise to engage such persons from the left over 76 candidates and the candidates so invited participated and failed, they cannot maintain a writ application against their non-selection. The principle in this regard is well laid down by plethora of decisions of the Hon'ble Supreme Court and the High Court from time to time.

10. The other aspect of the matter that a new yardstick was sought to be adopted after the petitioners had found their name in the merit list, the Court is in agreement with the respondents that a long time gap between the earlier skill test and the re-exercise initiated after a gap of many years, the necessity to test as to how much experience and skill coupled with knowledge such candidates still possessed with themselves, was required to be done keeping in mind that these are responsible posts and life and limbs would be dependent on their ability



to render their skill for proper medical treatment to patients.

11. In the end, the Court, therefore, holds that the petitioners do not have a right for a direction upon the respondents after having participated and failed in the deliberation and further these appointments being on contract for a limited period and not substantive appointment under the State, the so called case of discrimination also even in the case of these engagements are not made out.

12. In view of the above, writ application has no merit and it is dismissed.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	30.09.2016
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