

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1642 of 2016

IN

Civil Writ Jurisdiction Case No. 10912 of 2014

- =====
1. 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.
 2. 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
 3. 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.

.... Respondents / Appellants

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, Pariwar Kalayan Bhawan Patna.
6. The State Programme Officer, State Health Society, Bihar, Parivar Kalyan Bhawan, Patna.

.... Respondents / Respondents.

7. Prem Prabhakar, S/o Indradeo Singh, R/o Village Boknarikhurd, P.O. Makhdumpur, District Jehanabad,
8. Kumar Rajeev Suman, S/o Late Vyas Nandan Rai, R/o Village Bhirha, P.S. Rosera, District Samastipur.

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Appearance:

(In LPA No.1642 of 2016)

For the Appellant/s : Mr. Amish Kumar, Advocate.

For the State: Mr. Md. Nadim Seraj, G.P. 5.

For the Respondent-SHS: Mr. K.K. Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 14-12-2017

Heard learned counsel for the appellants, learned counsel



representing the private respondents, the State Health Society as also the State of Bihar.

2. The three appellants in the present Letters Patent Appeal were respondents no. 9, 7 and 8 respectively in CWJC No. 10912/2014 which was filed by the respondent no. 7 and 8 in the present appeal.

3. The appellants are aggrieved by the order dated 01.08.2016 passed in the Writ Application by which the learned single Judge of this Court has been pleased to set aside Memo No. 5031 dated 03.06.2014 issued by the respondent no. 6 cancelling the appointment of the writ petitioners – respondents no. 7 & 8 on the basis of the opinion of the General Administrative Department, Government of Bihar.

4. A short point for consideration arose before the learned single Judge. The learned single Judge held that the General Administrative Department as well as the Bihar State Health Society failed to consider that the selection and appointment vide the second list was in continuance of the selection process which was initiated vide Annexure-1 to the Writ Application. The second list was prepared to fill up the vacancies which arose on account of non-joining of the 63 Aayush Doctors, 16 of whom belong to Aayush Homoeopathic Category with which the Writ Petition was concerned.



5. The learned single Judge took note of the fact that out of 16 Aayush Doctors, who did not join, 10 were from the general category and 6 were from the reserved category. A distinguishing feature was also noticed by the learned single Judge saying that it is not the case of the respondents that 16 members of Aayush Homoeopathic Doctors joined the job and then left the service, it is a case where they had not joined and so the vacancies which were not filled up were required to be filled up by issuing the second list. According to the merit panel of the respective categories against respective vacancies if 10 of the general category candidates and 6 of the reserved category candidates did not join the vacancies were required to be filled up from their respective merit list and, therefore, while issuing the second list there were no requirement of providing a fresh roster as it would have amounted drawing a fresh panel and the number of the vacancies which were notified and against which the panel was prepared all would have been altered. The learned single Judge has also considered the judgment of the Hon'ble Supreme Court, particularly the Constitution Bench judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Ramesh Ram**, reported in **(2010) 7 SCC 23**, and the judgment rendered in the case of **Indra Sawhney Vs. Union of India**, reported in **1992 Suppl. (3) SCC 217**. Paragraph 39 of the order of the Hon'ble Apex Court in the case of



Union of India Vs. Ramesh Ram (Supra) has been quoted and it is once again taken note of hereunder for a ready reference:

“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 course of submissions learned counsel for the appellants submits that the reservation rule would permit such kind of fresh creation of roster and / or adjustments which were sought by one Dr. Kameshwar Prasad Singh, who had filed a representation in his representative capacity. No such reservation rule has been brought to our notice and we are of the view that no such rule can be followed which is in direct conflict with the judgment of the Hon'ble Apex Court, particularly the Constitution Bench judgment, which has been referred here-in-above. If the plea of the appellants is allowed then it would amount to transgressing the limit of reservation of 50% and it would virtually amount to preparing a fresh merit list with an altered vacancies which, in our opinion, cannot be permitted in accordance with law.

7. It is also worth noticing that the impugned order was



passed on the opinion of the General Administrative Department, Govt. of Bihar, the State of Bihar has not preferred any appeal against the order of the learned single Judge and thereby accepted the view expressed by this Court passed on the basis of the Constitution bench judgment of the Hon’ble Apex Court. We find no illegality or infirmity in the order passed by the learned single Judge.

8. The Appeal has no merit and it is accordingly dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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