

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.444 of 2017

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Md. Fakhir Usmani, son of Md. Salim, resident of Mohalla- Dumduma, PO + PS-
Laheriasarai, District- Darbhanga, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Health Department, Bihar, Patna.
2. The Commissioner –cum- Secretary, Health Department, Government of Bihar, Patna. Deputy Director of Education, Bihar, Patna.
3. The Director, Department of Health, Government of Bihar, Patna.
4. The Examination Controller for Contact Appointment on the post of O.T. Assistant/Lab Technician, Department of Health, Government of Bihar, Patna.
5. The Nodal Officer, State Health Committee, Health Department, Bihar, Patna.
6. The Executive Director, State Health Committee, Bihar, Patna.
7. Bihar Staff Selection Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate
For the Respondent-State : Mr. S.D. Yadav, AAG-9
Mr. Nagendra Kumar, AC to AAG-9
For the Respondent-BSSC : Mr. Prabhat Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-09-2017

The contest in this writ petition is whether the qualification obtained by the petitioner i.e. Diploma in Operation Theatre Management is equivalent to the qualification so required in the advertisement which prescribes that the candidates applying for the post of Operation Theatre Assistant be possessed with a Diploma in Operation Theatre Assistant.

It is not in dispute that the petitioner has obtained a Diploma in Operation Theatre Management from Aligarh Muslim University. It is also not in dispute that Operation Theatre



Management is a professional course. The dispute is that neither the State in its Health department recognizes the qualification nor does it treat it as equivalent to Diploma in Operation Theatre Assistant.

Although Mr. Shahnawaz Ali, learned counsel appearing for the petitioner endeavours hard to contest the stand taken by the respondent-State as well as the Commission but in view of the position settled by a Division Bench of this Court in the judgment reported in **2008(1) PLJR 583 (Dhirendra Kumar Singh vs. The State of Bihar)** more particularly paragraph 7, the attempt would be futile for the issue of equivalence entirely lies within the domain of the employer and it is not for the Courts to give advice thereon. For the sake of convenience the opinion expressed by the Division Bench in paragraph 7 of the judgment rendered in the case of **Dhirendra Kumar Singh** (supra), is reproduced hereinbelow:

“7. Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification to be equivalent to another qualification, is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teachers’ training courses referred therein are training qualifications of different grades and cannot by any means be



equivalent with each other, a *priori*. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject.”

Specific stand has been taken by the State at paragraph 6 of the counter affidavit in which it is stated that a Diploma in Operation Theatre Management has not been prescribed under the Rules for appointment as Operation Theatre Assistant.

The writ petition is disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12-09-2017
Transmission Date	NA

