

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2808 of 1989

1. Dr. Sajjan Kumar Budhia son of Shro Lok Nath Budhia
2. Dr. Diva Nath Das, son of Dr. Gaurikant Das
3. Dr. Chandra Sen Kumar Sinha s/o Sri B.N. Prasad
4. Dr. Abhay Kumar Choudhary s/o Sri Ram Prasad Choudhary,
5. Dr. Ajeet Kishore Gupta son of Shri Nawal Kishore Prasad
6. Dr. Manoj Kumar son of Shri M.N. Verma
7. Dr. Ranjeet Kumar son of Sri Ramjee Prasad
8. Dr. Ashwani Kumar Sharma son of Sri Ram Kishore Choudhary
9. Dr. Braj Kumar son of Sri Rajendra Mahto
10. Dr. Govind Prasad son of Sri KaliNayak
11. Dr. Arvind Kumar son of Sri L.P. Sharaf
12. Dr. Dilip Kumar son of Sri Sudha Sindju Sahu
13. Dr. Jay Prakash Vishwakarma son of Sri Ram Harsh Vishwakarma
14. Dr. Indra Vijay Vishwarma son of Sri Indrajeet Vishwarma
15. Dr. Shashank Shekhar Samayar son of Sri Jadu Nath Prasad
16. Dr. Madhurendra Prasad son of Sri Rajendra Pd.
17. Dr. Pradeep Kumar son of Bhawanjee Pd.
18. Dr. Ashok Kumar Sinha son of Sri Ramashray Singh
19. Dr. Arun Kumar Singh son of Sri Shyam Bihari Singh
20. Dr. Shailendra Kumar son of Sri Bishwanath Pd.
21. Dr. Dhirendra Kumar son of Sri B.P.N. Singh
22. Dr. Hemant Kumar Verma son of Sri R.P. Verma
23. Dr. Manoj Kumar son of Shri M.N. Verma
24. Dr. Sahilendra Kumar son of Sri R.P. Singh
25. Dr. Mandira Bose w/o Dr. Manoj Singh
26. Dr. Rashmi Singh Prakash w/o Dr. Dibya Prakash
27. Dr. Amita Sinha w/o Dr. Sanjay Sinha
28. Dr. Sanjay Sinha son of Dr. S.N. Sinha
29. Dr. Eva Sinha wife of Dr. Sanjay Sahay
30. Dr. Ashok Kumar Kariwal son of B.L. Kariwal
31. Dr. Sanjay Kumar Sinha son of Dr. K.N.P. Sinha
32. Dr. Shashi Kumar Gupta son of Sri Satyadeo Pd. Gupta
33. Dr. Kumar Kalyan Pd. Mehta son of Sri Durga Pd. Mehta.
34. Dr. Sushil Kumar Singh son of Sri K.P. Singh
35. Dr. Vinod Shankar Singh son of Dr. B.S. Singh
36. Dr. Rajeev Ranjan Jha son of Sri G.N. Jha
37. Dr. Amarendra Kumar Roy S/o Sri B.P. Roy
38. Dr. Sumit Prasad s/o Sri Teg Lal
39. Dr. Amaresh Kumar Sinha son of Late Ramadhin Sinha
40. Dr. Pramod Kumar Ojha s/o Sri C.D. Ojha
41. Dr. Kumar Ranjan son of Sri Mod Narayan
42. Dr. Rajiv Nandan Sahai, s/o Sri K.N. Sahai

All are residing at Doctor's Hostel, Patna medical college & Hospital,
Patna.

43. Dr. Navin Kumar Singh s/o Sri R.N. Singh
44. Dr. Raju son of Sri Ram Pyare Prasad
45. Dr. Rejesh Dwivedi s/o Dr. H.N. Dwivedi
46. Dr. Nasith Gami son of Dr. N.K. Gami
47. Dr. Sujata Roy D/o Dr. J.D. Sharma



48. Dr. Mukesh Kumar Gupta son of Sri P.L. Sharaf
49. Dr. Usha Yadav d/o Dr. C.N. Yadav
50. Dr. Sujata Sahay d/o Dr. B.N. Sahay
All are residing at Doctor's Hostel, Darbhanga Medical College & Hospital, Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Commissioner, Department of Health, Govt. of Bihar, New Secretariat, Patna.
2. The Controller of Examination, Health Services, Govt. of Bihar, Patna.
3. The Chairman, Post Graduate Medical Admission Test 1989, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shanti Pratap
For the Respondent/s : Mr. Anjani Kumar, AAG 4
Mr. Amit Kumar, AC to AAG 4

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

12 11-12-2018 The genesis of this reference before the full bench is an order that came to be passed by the then Ranchi Bench of the Patna High Court and noticing the same, the following order was passed on 17th March, 1989:-

“This writ application has been filed on behalf of the fifty petitioners for a writ of mandamus directing the respondent-State to entertain the applications of the petitioners for appearing at the Post Graduate Medical Admission Test which is to be held on 26th



March, 1989.

It has been stated on behalf of the petitioners that according to the prospectus published by the State Government for holding of the Post Graduate Medical Admission Test for the Session 1988-89, 31st May, 1989 had been fixed as the cut off date; in other words, those candidates who become eligible for appearing at the said examination by 31st May, 1989, shall be entitled to appear at the examination in question. These petitioners shall be eligible to appear at the said examination by 31st May, 1989 and, in normal course, there was no bar on the part of the State Government in entertaining the applications filed on behalf of the petitioners in terms of the prospectus.

However, it appears that four petitioners, who are also appearing at the aforesaid examination, filed a writ application [C.W.J.C. No. 334 of 1989 (R)] before the Ranchi Bench of this Court making a grievance that the cut off date for eligibility for appearing at the said examination should have been 2nd May, 1989 instead of 31st May 1989.

A Bench at Ranchi passed the following order on 20th February, 1989:-

“The grievance of the petitioner is that in spite of direction of Supreme Court that P.G. Courses in all the branches



of Medical Colleges should start from 2nd May of each year, the State Govt. has extended the period of eligibility on to 31st May.

Issue notice to respondent No. 2 and 3 under registered cover with A/D to show cause why appropriate final order be not passed at the admission stage itself. Requisite etc. must be filed by 23rd Feb. 1989 failing which this application as against the concerned respondents shall stand rejected without further reference to a Bench.

It is ordered that the candidate who do not acquire the requisite qualification upto 2nd May, 89 shall not be issued admit cards for appearing in 1989 P.G.M.A.T.”

In view of the interim order passed by the Bench at Ranchi, now it is no more open to the State Government to entertain the application of such candidates who become eligible for appearing at the examination in question beyond 2nd May, 1989.

It need not be pointed out that when a Bench of this Court at Ranchi has passed an interim order directing the State Government not to entertain applications of the candidates who become eligible after 2nd may, 1989, there is no question of a Bench of same Court



passing a contrary order directing the State Government to entertain applications in terms of the prospectus of candidate who become eligible upto 31st May, 1989. In our view, the petitioners instead of filing a writ application before this Court should have filed an application for modification/clarification of the interim order dated 20th February, 1989, passed in C.W.JC. No. 334 of 1989 (R), at Ranchi which could have been considered by the Bench passing the interim order in question.

During the hearing of this writ application it transpired that the records of C.W.J.C. No. 334 of 1989 ® has been called to this Court and has been listed for admission along with the present application. It is not possible for us to pass any order in that connected writ application [C.W.J.C. No. 334 of 1989(R)], because the petitioners of that writ application may not have information that the records of that case has been transferred to this Court and has been listed for admission before this Bench.

Accordingly, we direct the petitioners of the present writ application to move he Hon'ble the Chief Justice to send the records of C.W.J.C. No. 334 of 1989 (R) to Ranchi. We make it clear that it will be open to the State Government as well as any of the petitioners to file an application in C.W.J.C.



No. 334 of 1989 (R) for modification or clarification of the order. It need not be pointed out that the petitioners being affected by that interim order have a locus standi to file an application for clarification or modification of the interim order passed in C.W.J.C. No. 334 of 1989 (R). However, under the circumstances mentioned above, it will be advisable on the part of the State Government to consider the question of postponing the examination and to get a clarification made in the connected writ application by the Bench at Ranchi. We make it clear that we are not expressing any opinion on the merit of the grievance of the petitioners.

Put up this application for admission on 27th of March, 1989.”

The then Ranchi Bench again passed an order on 30th of March, 1989 and on the following day i.e. on 31st March, 1989, the present reference to the Full Bench was made by a division bench of this Court by the following order in this case:-

“There seems to be conflicting decisions in relation to the point involved in this application. They, we feel, should be finally resolved by a Full Bench decision.

This application will be heard. The matter is referred to a Full Bench. No notice



need be issued as all the parties have appeared.

We feel, awaiting the decision of the Full Bench, the petitioners as well as the intervenor-petitioners should be allowed to appear in the examination to be held on 2nd of April, 1989, for the Post Graduate Medical Admission Test, 1989. Since time is short, the parties will make every effort to see that the petitioners and the intervenor petitioners are accommodated in the examination to be held from 2nd of April, 1989 because the delay is not of their own making.

The result of the petitioners as well as that of the intervenor petitioners will await the decision of the Full Bench.

Let the file be placed before the Hon'ble the Chief Justice for constituting a Full Bench as early as possible because the matter deserves expeditious consideration.”

By way of an interim direction, a Division Bench issued interim orders on 1st April, 1989 that is extracted hereunder:-

“This is an application filed by one Dr. Nasrin Mallick in person to be added as an intervenor petitioner and further for a direction to the respondents concerned to issue an admit card to the petitioner and



permit her to appear at the Post Graduate Medical Admission Test 1989. It is stated that due to typing mistake the name of the applicant could not be included in the main writ petition as one of the petitioners as originally filed.

This writ application has already been admitted and has been referred for final hearing to a Full Bench. In the order passed at the time of admission in this writ application this Court ordered that no notice need be issued as all the parties have appeared. In so far as the present appellant is concerned it is borne out by the order passed by this Court that in similar circumstances many other intervenor-applicants have been allowed and quite a large number of candidates have been admitted to appear at the ensuing test. Having heard Mr. S.N. Jha, S.C.II we think that the present applicant's case stands on a stronger footing than the other candidates who have been added as intervenor-petitioners.

On the facts and in the circumstances of the case we, accordingly, allow this application and direct that the applicant be added as an intervenor-petitioner in the writ application and further direct the respondents concerned, including respondent no. 2, to issue an Admit Card and to her similar to the original petitioners and



intervenors to Dr. Nasrin Mallick, the newly added intervenor petitioner, for the test scheduled to be held on the 2nd of April, 1989.

Let a copy of this order be handed over to Dr. Nasrin Mallick for getting the needful done by the concerned respondents, specially the controller of Examination, Health Services, Government of Bihar (Respondent No.2).”

Further, notices to the contemner were also issued on 3rd of May, 1989, for compliance of the said directions.

It appears that the State of Bihar preferred Civil Appeal No. 3658 of 1989 before the Apex Court and vide judgment dated 15th November, 1989 in the case of State of Bihar and others Vs. Dr. Sanjay Kumar Sinha, reported in (1990) 4 SCC 624, in paragraph 6 of the judgment held as follows:-

“6. Counsel for the respondents has brought to our notice the position that in the previous year the State of Bihar had taken the stand that the extension was not possible in view of this Court’s directions and the State’s stand this year was to the contrary. Counsel for the State of Bihar has regretted this position. We find that those who had qualified beyond the cut-off date in the previous year have taken examination in terms of the prospectus of this



year along with the new group. The mistake of the State in fixing a date beyond the cut-off date fixed by this Court has obviously misled a group of candidates. In these circumstances, we are of the view that it is in the interest of all that the mistake committed by the State of Bihar should be condoned and on the basis of the result of the selection examination with May 31, 1989, as the cut-off date, admissions for this year should be permitted. We agree with the High Court that the view it has taken on the basis of this Court's directions was the most appropriate one but in the special circumstances referred to above we have made a departure confined to the present year only."

A perusal of the said second last paragraph of the report read with the penultimate paragraph indicates that the stated mistakes having been committed in the process of holding examinations were condoned while indicating the cut-off date and appropriate directions were issued.

The matter, therefore, now stands foreclosed with the aforesaid judgment of the Apex Court as pointed out by Sri Anjani Kumar, learned Additional Advocate General for the State of Bihar and consequently nothing survives further to be answered in this reference. We, therefore, dispose of this reference as well as the writ petition as Sri Shanti Pratap,



Counsel for the appellants submits that the appellants are no longer responding in this case.

The reference, accordingly, stands disposed of and the writ petition also stands disposed of on the said terms.

(Amreshwar Pratap Sahi, CJ)

(Chakradhari Sharan Singh, J)

(Sudhir Singh, J)

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