

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4275 of 2017

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1. Chhotu Kumar, aged about 33 years, son of late Ramchandra Baitha, resident of Mohalla- Jawaripur (Cold Storage), P.S.- Tilkamanjhi, District- Bhagalpur.

2. Sanjay Kumar aged about 31 years, Son of Late Brahmdev Sharma, C/o Shambhu Prasad Sharma, resident of Village Green City Colony Hawaii Adda, P.S.- Tilkamanjhi, District- Bhagalpur.

3. Shashi Kant Kumar aged about 34 years, Son of Sri Bhasker Prasad Singh, resident of Qtr. No. 137 B at East Railway Colony BGP, P.S.- Muzahidpur, Dist- Bhagalpur.

4. Md. Firdous Alam aged about 30 years, Son of Md. Abdul Qaiyum, resident of Kasim Bagh Nawab Colony, Jarlahi Road, P.S.-....., District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Government of Bihar, Patna.

2. The Director-in-Chief (Administration), Health Services, Government of Bihar, Patna.

3. The Nodal Officer, Para Medical Cell, IAS Association Building, Patna- 14.

4. The Executive Director State Health Society, Sheikhpura, Patna, Bihar.

5. The Civil Surgeon-cum-Chief Medical Officer, Bhagalpur. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arup Kumar Chongdar

For the Respondent/s : Mr. Binod Kumar Yadav-SC18

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 18-05-2018

1. The petitioners herein have challenged the order dated 15.02.2017, whereby and whereunder their appointments made on the post of Medical Lab Technician (MLT) has been terminated. It has been further prayed for reinstating the petitioners herein and for payment of consequential benefits.

2. The short facts of the case are that the Health Department, Government of Bihar came up with memo dated 07.02.2008, whereby it was decided to publish advertisement for appointment of 680 Medical Lab Technicians (MLT). The



educational qualification prescribed was Intermediate in Science or equivalent qualification and possessing Diploma in M.L.T. from a Government or recognized institution. The last date of submission of application was 14.09.2008. The petitioners are said to have passed Intermediate in Science subject from Bihar School Examination Board and have passed the Lab Technician course from Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University). The petitioner had then appeared in the written test on 22.02.2009 and result was published on 18.08.2009 wherein, the petitioners were shown as the successful candidates. The petitioners had then received individual call letters for appearing in the interview and for verification of documents. After the petitioners were ultimately declared successful and their documents had been verified, the petitioners were directed to submit their joining before the Civil Surgeon, Bhagalpur by a letter dated 16.08.2010. It may be pointed out that the respondents had taken undertaking regarding their appointment being subject to verification of institutions from where, they had obtained the requisite educational qualifications. It is the further case of the petitioners herein that the appointment of the petitioners was also confirmed by the letter of the Directorate, Health Services, Bihar, Patna dated 10.12.2010. However, suddenly, by an order dated 15.02.2017, the Civil Surgeon-cum-Chief Medical Officer, Bhagalpur was directed to relieve all the petitioners from work till their training



certificate pertaining to the Lab Technicial Course obtained from Distant Education, is verified.

3. The learned counsel for the petitioners has submitted that the respondents cannot adopt two standards inasmuch as while the candidates appointed on the post of M.L.T. through the concerned selection process have been continuing in their employment and working till date as well as are getting salary regularly, however the petitioners herein have been relieved from their services. It is further submitted that the case of the petitioners herein is similar to that of Pawan Kumar and Awadhesh Kumar, both of whom had obtained degrees/ education from Janardan Rai Nagar Rajasthan Vidyapeeth through distant mode and in whose case, this Hon'ble Court by a judgment dated **20.05.2016** passed in **CWJC no. 20837 of 2014** has held that the services of such petitioners cannot be terminated on the sole ground that they had completed their courses from the Distant Education and in such view of the matter, the order of termination/ relieving was set aside and it was directed to reinstate the petitioners with full back wages.

4. *Per contra*, the learned counsel for the respondents, referring to the counter affidavit, has submitted that it has been decided by the department not to engage persons who have obtained degree by way of the Distant Education mode.



5. I have heard the learned counsel for the parties and considered the materials available on record. It is the admitted position that right from the advertisement and all throughout the selection process, there was no such stipulation to the effect that a person holding technical education degree through the Distant Education mode cannot apply or is barred from selection process, however the same was introduced subsequently. It has also not been denied by the respondents that similarly situated candidates who had obtained the technical education certificates by way of distant education mode are still working, after being appointed by the same selection process by which the petitioners herein had been appointed. It has also not been denied that the present case is covered by a judgment dated **20.05.2016** passed by this court in **CWJC no. 20837 of 2014**. It is equally an admitted fact that the petitioners herein were allowed to participate in the recruitment process of examination, interview and counseling and thereafter, finding the petitioners herein to have been possessing the requisite educational qualification, the petitioners herein were appointed in the year 2009-10, however there was no whisper about there being a bar to appointment in case, the technical education is obtained by a candidate through Distant Education mode. In such view of the matter, the respondents are precluded from subsequently raising the issue of the appointed candidates being not eligible in case, they have obtained the technical



education by Distant Education mode inasmuch as, it is well settled law that the rules of the game cannot either be changed midway or after the entire selection process has culminated into appointment of the candidates. This is the reason why this Hon’ble Court by a judgment dated **20.05.2016** passed in **CWJC no. 20837 of 2014** has quashed the order of termination of exactly similarly situated incumbents.

6. Having regard to the facts and circumstances of the case, this Court finds that a different view cannot be taken other than the view taken by this Hon’ble Court in its judgment dated **20.05.2016** passed in **CWJC no. 20837 of 2014**. Even otherwise, as discussed hereinabove, the order of relieving the petitioners from their services or for that matter, the so-called order of termination dated 15.02.2017 passed by the Civil Surgeon-cum-Chief Medical Officer, Bhagalpur is untenable in the eyes of law, hence is set aside with a direction to the respondents to reinstate the petitioners forthwith along with payment of full back wages.

7. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	03.04.2018
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