

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11611 of 2009

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1. Mohan Prasad s/o late K.D.N. Lal (Kishan Deo Narain Lal) resident of village/Mohalla Sheochandra Colony Hanuman Nagar Kankarbagh P.S. Patrakarnagar patna 20
 2. Hari Shankar Sharma s/o late Shiv Nandan Sharma resident of late Shiv Nandan Sharma resident of village/Mohalla A 21 Bankmen's Colony Chitragupta Nagar Kankarbagh P.S. Kankarbagh Patna 20.
 3. Narendra Kumar Sinha S/o Late Mundrikka Pd. Singh resident of village/Mohalla R.K. Lane Langertoli Kadamkuan Patna 4
 4. Smt. Shanti Kumari W/o Dr. Navin Chandra Sinha D/o Sri Chandradeo Mehta R/o village Garihahanpur P.O. Piri Bazar P.S. Surajgarha Dist. Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Health and Family Welfare Deptt. Bihar, New Secretariat, Patna.
3. Additional Director (Medical Education) Health Deptt. Bihar, New Secretariat, Patna.
4. Deputy Secretary, Health Medical Education and Family Welfare, Bihar New Secretariat, Patna.
5. Principal Patna Medical College and Hospital, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate.
Mr. Uma Kant Verma, Advocate
Mr. Rajendra Kumar, Advocate

For the State : Mr. S. Raja Ahmad, AAG 5
Mr. Alok Ranjan, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 19-04-2018

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Petitioners have approached this Court seeking a direction for regularization of their services in the Bihar College of Physiotherapy & Occupational Therapy Viklang Bhawan Hospital, Kankarbagh, Patna (hereinafter referred to as 'the BCPO') praying



that they are entitled to regularization and benefits of the teaching posts in the organization in view of the facts that they have served therein throughout their career right from their initial deputation under order dated 12.09.1998. An additional fact which is required to be considered is that after filing of the writ petition petitioners have retired from their services. This fact has been brought on record by way of I.A. No. 6209 of 2009.

3. In view of the aforesaid developments subsequent to filing of the writ petition the issue now is only whether the petitioners would be entitled to the notional benefits ?

4. It is submitted by the counsel for the petitioners that the initial deputation of the petitioners was made in the BCPO after its creation under Resolution of the State Government which is Annexure 4 dated 29.03.1998. The said Resolution of the State Government provides an independent status to the BCPO and as per the same it ceased to be a part of the Patna Medical College and Hospital, Patna and became an organization for grant of education of degree of physiotherapy and occupational therapy to the students.

5. Counsel for the petitioners has also drawn the attention of the Court towards Annexure A which is dated 07.04.1999. The main submission in support of the petitioner's prayer is that by virtue of harmonious reading of the letter dated 07.04.1999 (Annexure IV) which was a policy decision along with the "Regulation for bachelor



degree of Physiotherapy (B.Ph.T) (4x ½ years degree course)”, more specifically Clause 38 A and (b) thereof, the petitioners are qualified for holding the teaching posts. It is submitted that in light of the said Resolution dated 07.04.1999 and Regulation, the petitioners were deputed as Tutor. It is also submitted that since the State has extracted the teaching work throughout their service period, denial of the benefits of the teaching posts is highly unjust.

6. The counsel for the State has referred to the second supplementary counter affidavit filed on behalf of the State and resisted the claim of the petitioners. The submission on behalf of the respondents is that the petitioners were neither members of the Bihar Health Service cadre nor members of the Bihar Medical Education Services. They did not possess post Graduate Degree and as such they could not claim the benefits of the teaching post in the BCPO. It has specifically been stated that the petitioners are paramedics and there is no service rules regarding them.

7. It is the case of the respondents State that the qualification prescribed for the teachers of the college has been equated with the teachers of medical college and as such the petitioners are not in a position to claim benefits of the teaching posts. The substance of submission advanced on behalf of the State is that their continuation as tutors in the BCPO after their deputation in 1998 does not vest any right in the petitioners’ to claim benefits of



regularization to teaching posts or claiming the benefits of becoming the member of the teaching cadre.

8. Reference has been made to the Bihar Medical Education Service Cadre and Recruitment to the Cadre Rules as also to subsequent rules of 2008, in support of the submissions advanced on behalf of the State that since the petitioners did not have the appropriate requisite qualification they could not by any stretch of imagination claim to either be regularized on the teaching post or to the benefits in respect of the said posts. This Court finds from the pleadings on record that admittedly the petitioners are not holding post graduate degree.

9. The case of the petitioners is that they are holding the bachelor degree of Physiotherapy & Occupational Therapy including the internship under the faculty of Patna University by submitting so they claim that Clause 38A confers upon them the status and eligibility for being regularized as teachers in the teaching cadre of the BCPO. Clause 38(a) of the regulation reads as follows :

“38(a) persons engaged or associated with teaching work in Bihar College of Physiotherapy and occupational therapy for minimum of eight years continuous teaching experience in diploma in physiotherapy at school of physiotherapy and occupational therapy, P.M.C.H will be considered equivalent to degree (Bachelor of Physiotherapy) holder and may be admitted to post graduate examination without attending the classes in future if such post graduate course starts, in this course.



10. Submission has to be considered in light of the fact that Clause 38 (a) is a part of the Regulation which provides the qualification in respect of acquisition of degrees and eligibility for the purpose of appearing in various examinations of Physiotherapy. The same does not prescribe the requisite qualification or eligibility for appointment to the teaching post in the college in question.

11. Bare reading of the Clause 38A as reproduced herein above would shows that by virtue of their posting as Tutor and being associated with teaching work in the BCPO for eight years and by virtue of their internship the petitioners could have claimed eligibility for admission in the post graduate course for acquiring post graduate degree. The same does not support the claim of the petitioners for being granted the status of teachers by way of regularization in the BCPO. Annexure 8 on which reliance was placed by the counsel for the petitioner is also in respect of eligibility for admission in post graduate course.

12. Since admittedly they have not taken admission in the post graduate courses by taking advantage of Clause 38A of the said Regulations, and have not acquired the post graduate degree, the petitioners in light of the requisite qualifications for appointment to the teaching cadre are therefore, not eligible as they are not Post Graduates. Merely because they have continued as tutor on deputation by virtue of their experience in the BCPO, they cannot be considered



eligible, since admittedly they do not possess the qualification of post graduate degree which as per the stand of the State Government is essential qualification for being considered for appointment to the teaching posts in the BCPO.

13. This Court finds that the writ petition has been filed on the eve of superannuation of the petitioners after having continued on deputation in the organization for a long period right from deputation in the year 1998 up till 2009. During this period no such claim has been agitated by the petitioners. In fact they have continued to discharge their duty as deputationist without raising any claim in respect of the benefits of the teaching cadre and without even making an Endeavour to acquire the qualification of post graduate degree.

14. The claim of the writ petitioner does not appear to this Court to be enforceable for the reasons indicted herein above.

15. The writ petition is therefore, dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2018
Transmission Date	

