

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6117 of 2017

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1. Manikant Sinha, Son of Sri Surendra Prasad, Resident of village - Dhana Dihri,
Police Station Paras Bigha, District - Jehanabad
2. Sanjeev Kumar Singh, Son of Sri Awadhesh Singh, Resident of village + P.O.
Mahanda, Police Station Bhagwanpur Hat, District - Siwan

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal and Fishery
Resources Department, Govt. of Bihar, Patna
2. The Deputy Secretary of Govt., Animal and Fishery Resources Department Govt.
of Bihar, Patna
3. The Director, Animal and Fishery Resources Department
4. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna
5. The Chairman of the Bihar Public Service Commission, Bailey Road, Patna
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
7. The Under Secretary - Cum - Examination Controller, Bihar Public Service
Commission, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Niranjana Kumar, Advocate
For the Respondent/s : Md. Khurshid alam- A.A.G.-12
Ms. Nutan Sahay, A.C. to A.A.G.-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 25-04-2018

This writ application has been preferred challenging
the amendments to Rule 5(1) of Bihar Veterinary Service
(Appointment and Service Conditions) Rules, 2014 (hereinafter
referred to as the Rules, 2014) vide notification dated
04.02.2016 vide Memo No. 401 issued by the Secretary of the
Government Animal and Fishery Resources Department,



Government of Bihar, as contained in Annexure-5 to the writ application.

2. By the impugned notification, an amendment has been brought in Rule 5(1) and thereby the benefits of granting weightage has been extended to the persons engaged in different organizations and agencies such as JEEVIKA other than Government Hospitals. The petitioners have also prayed for quashing the advertisement No. 01/2017 published by the respondent Bihar Public Service Commission to the extent it relates to conferring weightage to the candidates who have gained experience in the Non-Government Organization like Co-operative Societies etc.

3. In course of argument, learned counsel representing the petitioner has taken us through the Rules, 2014 framed by the Government of Bihar in exercise of its power under proviso of Article 309 of the Constitution of India. The Rules, 2014 *inter alia* provides the required qualification for purpose of appointment in the General Cadre/Specialist Cadre. The minimum educational qualification for such appointments is B.V.Sc. and A.H. from a university recognized by the Indian Veterinary Medical Council.

4. Rule 5(1) of Rules, 2014 while laying down the



educational qualification required for such appointments also provides that for purpose of regular appointment in a Government Hospital, the veterinary doctors who have been appointed on contract basis will be given weightage for their experience. By bringing an amending rule vide Notification No. 401 dated 04.02.2016, now sub-rule (1) of Rule 5 of the Rules 2014 has been amended. The amended rule provides weightage to those veterinary doctors and officers who have worked as Subject Matter Specialist (SMS) under the Government of Bihar on contract basis. Now by virtue of amending rules the veterinary doctors working in Bihar State Milk Co-operative Federation (COMFED) and Bihar Rural Livelihood Promotion Society (JEEVIKA) will also be entitled for the weightage. Sub rule (2) of Rule 5 of the Rules, 2014 has been amended to include the educational qualification of B.V.Sc. as minimum qualification for purpose of such appointments.

5. After amending the Rules, 2014, an advertisement has been issued bearing advertisement No. 01/2017 inviting the eligible candidates to participate in the selection process for appointment against the total number of 903 vacant posts. A copy of the advertisement bearing No. 01/2017 has been brought on record as Annexure '6' to the writ application.



6. It is the contention of the petitioners that the amending qualification (Annexure – 5) with regard to Rule 5(1) of the eligibility criteria shown in the advertisement No. 01/2017 vide Condition No. 3/II are discriminatory, erroneous, unconstitutional and bad in law. It is submitted that the Rule 5(1) has been amended under a misconceived understanding of the word ‘Experience’ as according to the petitioners providing the weightage to the persons working under the different fields and different nature of job, even though they are possessing the qualification of B.V.Sc. and A.H. would not be just and proper.

7. In course of argument attempts have also been made to show that the nature of job performed by the Institutions looking after different schemes of the agriculture department has no concern at all with the nature of work to be performed by a veterinary doctor. It is submitted that the nature of job and duties performed in JEEVIKA and in other organizations are quite different than a veterinary doctor.

8. On the contrary, we find from the counter affidavit filed on behalf of the State authorities that they have defended the amendment brought in Rules, 2014 particularly in Rule 5(1) and Rule 3(ii) whereby weightage of experience originally given to only Veterinary Doctors appointed in Government Hospital



on regular/contractual basis has now been enlarged and extended to the SMS working on contractual basis in the Agriculture Department, Veterinary Doctors working with Bihar State Milk Co-operative Federation and Veterinary Doctors working with “JEEVIKA”. It is their submission that the impugned amendment neither suffers from any illegality nor violated any provision of Constitution of India. It is submitted that there is only minor change by virtue of the amended Rule of 2016 for giving weightage to experience of work to above said persons and that alone cannot be a ground to hold it unconstitutional.

9. It is submitted that the decision has been taken with due consideration and in the light of directions issued by this Court in Public Interest Litigations where issues of shortage of Veterinary Doctors were also noticed by this Court and it was found that out of total strength of 2052, there were only 705 regular Veterinary Doctors and 381 were working on contract basis.

10. Having gone through submissions advanced at the bar, we are of the considered opinion that the petitioners are not able to demonstrate any constitutional provision or legal provision whereunder the amending Rule of 2016 to the extent it



is under challenge may be held *ultra-vires* to Article 14 and 16 of the Constitution of India.

11. In our opinion, the State Government being their employer, it is within the domain of the Government to get satisfied with the experience of a candidate while working in other undertakings either of the Government or of any other Government undertakings. If the State Government has upon due consideration of the nature of work being performed by the candidates working in the different scheme of the Bihar Agriculture department, COMFED or JEEVIKA, is of the view that those candidates may also be given weightage for their experience, the same cannot be held to be bad in law or against the scheme of the Constitution.

12. We *prima-facie* find that the nature of job which are being performed by the persons involved in the implementation of the various schemes of the Government under the aegis in agriculture department or JEEVIKA are akin to the nature of work performed by the Veterinary Doctor, moreover, for purpose of consideration, they are also required to fulfill the educational qualification as per Rule. These are the matters within the domain of the employer.

13. We don't find any reason to quash the amending



rule and the advertisement as have been challenged in the present writ application.

14. The writ application is devoid of merit, it is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Ved/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27 .04.2018
Transmission Date	NA

