

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12691 of 2017

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Suman Kumar Suman, Son of late Bishundeo Singh, Resident of Village- Baltara,
P.S. Gogari, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate

For the Respondent/s : Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 11-01-2018

Heard Mr. Prashant Sinha, learned counsel appearing for the petitioner and Mr. Kamlesh Kishore, learned Assisting Counsel to Standing Counsel No.12 for the State.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The writ petition was initially filed seeking a direction to the respondent authorities to issue appointment letter to the petitioner on the post of Pharmacist pursuant to the selection process initiated vide Advertisement No.22/Pharma-1/99 dated 25.1.2000. It is after the writ petition was filed on 31.8.2017 that the Director-in-Chief (Administration), Health Services, Bihar, Patna has gone wiser to issue a letter dated 3.11.2017 placed at Annexure 'A' to the counter affidavit, whereby the claim of the petitioner has been rejected, inter alia, on grounds that a period of 3 years had lapsed since the counselling was held in December, 2014 and the validity of the panel so prepared is only



one year.

Seeking leave of the Court that the petitioner has filed I.A. No.138 of 2018 to question the order dated 3.11.2017 of the Director-in-Chief (Administration), Health Services, Bihar, Patna and considering that the order disposes of the claim of the petitioner learned counsel for the petitioner is permitted to question the same and as a consequence I.A. No.138 of 2018 is allowed.

Since the respondents have already explained their stand relying upon this very order in the counter affidavit filed, I find no necessity to seek a response on the interlocutory application.

The facts of the case leading to the order impugned is that a selection process was initiated by the respondents for appointment of Pharmacist through Advertisement No.22/Pharma-1/99 published on 25.1.2000. The selection process which consisted of holding of interview of the applicants after going through several rounds of litigation as discussed in the writ petition finally the result was published by the Staff Selection Commission on 15.7.2014, a copy of which is at Annexure 10 to the writ petition. The petitioner coming under the Backward category was one of the successful candidates with his Roll No.1991239 appearing at category 3 of the result which concerns the Backward Classes. The publication of result by the Staff Selection Commission was followed for fixation of date of counselling and accordingly the Directorate, Health Services, Bihar, Patna vide Memo No.788 (4) dated 8.9.2014 fixed the dates for verification of testimonials which was a part of counselling process and in so far as the petitioner is concerned, his



date was fixed on 25.9.2014 as confirmed from serial no.10 of the schedule placed at Annexure 11 to the writ petition.

According to the petitioner, since the Schedule of programme at Annexure 11 was never communicated to him he could not participate in the counselling on the date fixed i.e. 25.9.2014. On the basis of the counselling held, the final result-sheet was issued vide order dated 27.12.2014 at Annexure 12 and obviously since the petitioner along with a number of others did not participate in the counselling, their names did not find place in the final result-sheet.

The Directorate of Health Services taking note of the grievance of these candidates, vide order bearing No.717(4) dated 16.7.2015 at Annexure 13 gave one more opportunity to these successful candidates who could not participate in the counselling on the date fixed, by fixing 30.7.2015 as the date of counselling and which includes the petitioner. The counselling was held on 30.7.2015 and the petitioner and three others participated. Since no appointment order was being issued that the petitioner after representing before the Director-in-Chief, Health Services, Bihar Patna on 29.9.2015 vide Annexure 14 has approached this Court for appropriate direction to the Directorate of Health Services in issuing appointment letter and it is at this stage and after receiving copy of the writ petition that the Director-in-Chief (Administration), Health Services, Bihar, Patna has proceeded to reject the claim of the petitioner vide letter bearing No.1316(4) dated 3.11.2017 at Annexure 'A' and feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and I have perused



the records.

The facts are not in dispute. It is also not in dispute that the petitioner is a successful candidate for appointment against the post of Pharmacist and even though he could not participate on the date fixed for counselling on 25.9.2014, it is the Directorate itself which chose to give one more opportunity to such of the candidates who could not be present for counselling on the date fixed by fixing 30.7.2015 as the date of counselling vide letter dated 16.7.2015 present at Annexure 13 and the petitioner and three others have appeared on 30.7.2015 for counselling.

In my opinion, once the Director of Health Services has proceeded to consider the grievance of such of the candidates who could not be present on the date fixed for counselling by calling them for counselling vide letter dated 16.7.2015 and in which exercise the petitioner has participated, the Director, cannot be permitted to take a turn around on either of the two counts mentioned in the order dated 3.11.2017 i.e. a lapse of three years since the initiation; or the validity period for the panel. It is not a case where the panel had got exhausted by passage of time rather the counselling continued on the panel as late as on 25.9.2014 and it is when the result sheet was published on 27.12.2014 that the petitioner and some others complained about non-communication of date of counselling. It is taking note of the grievance that a decision was taken on 16.7.2015 enabling such of the candidates who could not participate in the counselling to allow them a chance on 30.7.2015 which is a mere extension of the date of counselling without affecting the validity of panel.



A bogie is unnecessary created by the Directorate itself after having proceeded with fresh counselling of the petitioner and 3 others. In my opinion the Directorate having completed the exercise by holding counselling for the petitioner with no other objection as to his eligibility, it was a mere completion of formality to issue the appointment order. The objections taken by the respondents, in the circumstances existing, have no lawful support.

In the circumstances discussed, the Director-in-Chief, Health Services, Bihar, Patna, respondent no.3 is directed to take steps for issuance of appointment order to the petitioner against the post of Pharmacist in the light of the counselling held on 30.7.2015, within six weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-01-2018
Transmission Date	NA

