

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4445 of 2018**

Dr. Nityanand Kumar, Son of Sri Bishwanath Gupta, Resident of House No.83, Mohalla- Ramjaypal Nagar, Gola Road, P.S.- Rupaspur, District-Patna- 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
4. The Chairman, the Bihar Public Service Commission, Bailey Road, Patna.
5. The Secretary, the Bihar Public Service Commission, Bailey Road, Patna.
6. The Joint Secretary, the Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Satish Chandra Mishra, Adv. |
| For the State        | : | Mr. Rajeshwar Singh -GA10       |
| For the BPSC         | : | Mr. Sanjay Pandey, Adv.         |

**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date : 23-07-2018**

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the action of the Bihar Public Service Commission (B.P.S.C.), whereby and whereunder, the petitioner's candidature has been rejected on the ground that he failed to produce the registration certificate of Bihar State Dental Council and, thereby, sought relief of mandamus directing the Commission to issue call letter for participation in the interview.

The fact of this case is that the State of Bihar has issued an advertisement vide Advt. No. 05/2015 for selection of 558 dental doctors providing the different types of reservations of posts for different categories of castes. As per advertisement, the maximum age



for unreserved category has been stipulated as 37 years, 40 years for backward category/extremely backward category and female of unreserved category and 42 years for scheduled caste and scheduled tribes candidates. The advertisement postulated the last date for receipt of the application mentioning as 30.4.2015 till 5 PM, the selection was to be made on the basis of interview.

The petitioner has pursued the course of dental surgery in the college affiliated to the Magadh University and the examination of dental surgery examination continued up to the year 2013. The petitioner completed the required one year internship in the month of February, 2015 and was issued the intern completion certificate on 21.4.2015 whereafter the petitioner was issued the College Leaving Certificate and Character Certificate on 21.4.2015. The petitioner filed an application for registration which was granted to him vide Registration No. 6456/A dated 07.01.2016 by the Bihar State Dental Council, Patna. Inasmuch as, the petitioner is a member of scheduled caste category, he obtained the caste certificate on 27.2.2016. He applied for the post but, he could not submit his registration certificate along with the application as the same was received by him on and after 7.1.2016 but, the B.P.S.C. started the interview for selection in December, 2017.

As per counsel for the Commission the entire process of interview is over and the interview was conducted in phase-wise manner. It has further been submitted, the petitioner failed to acquire



requisite qualification before the cut-off date. The sole question as emerged for consideration, whether the rejection of the application of the petitioner, on account of failure to produce the registration certificate before the due date, is proper or legal as has been claimed by the petitioner though before the last date, he could not attach the registration certificate as he could not secure such certificate but, before interview, he was armed with the registration certificate, so, the last date of interview should be the date for placement of necessary documents for consideration of appointment to the post of dental doctor whereas the B.P.S.C. has taken a plea that the only those candidates were called for interview, who could secure necessary qualification and certificate attached with application on and before the due date i.e. the last date of receipt of application, in failure to produce the same, the candidate cannot claim that his application has wrongly been rejected. Learned counsel for the Commission has also submitted that the last date was extended by corrigendum till 5.6.2015 even upto that date, the petitioner failed to secure the registration certificate and, as such, he cannot complain wrong treatment has been meted to him.

In support of the submission, learned counsel for the petitioner has placed reliance on the judgment in the case of *Dolly Chhanda Vs. Chairman, JEE* reported in *AIR 2004 SCW 5699* whereas the respondent has relied on the judgment in the case of *Dr. Akshay Kumar Vs. The State of Bihar through the Principal Secretary, Health Department & Ors.* reported in *2016(2) PLJR (HC) 6* and submitted that



the judgment has considered several judgments of the Hon'ble Apex Court.

Admittedly, the petitioner has obtained the registration certificate from the Dental Council of Bihar on 1.7.2015 i.e. after the last date for submission of the application form with complete document was 5.6.2015. The question in the present case is if the petitioner has failed to acquire the necessary qualification with supporting documents can be allowed to participate in the interview as because he has acquired the certificate on and before the interview started. This issue is no longer res integra by long line of judgments. The law is very clear that the person who is interested of selection must have a requisite qualification on and before the last date of receipt of the application or any date mentioned specifically in the advertisement, if a person acquires the qualification on and before the due date can only be considered for selection against the advertisement issued, subsequent acquisition of the qualification on and before the interview will not mitigate the effect of rejection of the application.

The judgment Dolly Chanda case (supra) which has been placed reliance by the petitioner is not an answer which has been raised in this case on account of certain confusion and information, therein, wrong certificate was given by the Zila Sainik Board, Sambalpur, as the ward of ex-armyman, wanted admission in the medical college, she was not given preference in getting admission in the medical college for reserved quota meant for the children/widows of the personnel of



armed/ paramilitary force, disabled in action during war or peace time operation. As the Zila Sainik Board had mentioned in the certificate as “not eligible” was a mistake which rectified later, in that context, the Hon’ble Apex Court has directed to get birth in the reserved seat meant for the ex-army man who were disabled during the war but, in the present case, the question is otherwise as the petitioner has failed to acquire the certificate of registration on and before the last extended date mentioned in the notification.

The identical issue was raised in the case of Dr. Akshay Kumar (supra) wherein also the person failed to obtain the registration from the Medical Registration Council on and before the date mentioned in the advertisement. This Court has placed reliance on several judgments, having rejected the prayer made by the petitioner to issue a mandamus against the rejection of his candidature. The Hon’ble Apex Court has specifically held that if the prescribed condition could not be fulfilled before the cut-off date mentioned in the advertisement, the eligibility criteria shall be applied with reference to the last date prescribed in the notification and the qualification prescribed is secured after the cut-off date will not be helpful to the candidate. In the case of ***U.P. Public Service Commission Vs. Alpna*** reported in ***(1994) 2 SCC 723***, the reason for rejection of the application was that the candidate has failed to secure the requisite qualification before the cut-off date, giving reason that many candidates superior to the respondent in merit may not have applied as the result was not declared before the last date



for receipt of applications. If once such an approach is recognized there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but, would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. It is relevant to quote paragraph nos. 8 to 10 of the aforesaid judgments which reads as follows:-

*“8. In our considered opinion, the order, under appeal, passed by a learned Single Judge cannot be faulted with. It is settled principle that if no cut-off date is prescribed in the advertisement, then, the eligibility criteria shall be applied with reference to the last date prescribed for submission of the application form. The contention of Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the appellant, that the date of interview should be the relevant date for determination as to whether a candidate fulfills the eligibility criteria or not cannot be accepted. We can, in this regard, usefully refer to the decisions of the Supreme Court in the case of Bhupendra Pal Singh vs. State of Punjab, reported in (2000) 5 SCC 262 and Basic Education Board, U.P. vs. Upendra Rai, reported in, (2008) 3 SCC 432.*

*9. In the case of M.V. Nair (Dr.) vs. Union of India, reported in (1993) 2 SCC 429, a three-Judge Bench of the Supreme Court disapproved the contention that even though a candidate, who was ineligible initially, but deserved to be considered along with other eligible candidates, as he acquired eligibility during the pendency of the proceedings. In the said decision, the Supreme Court, in clear terms, held that suitability and eligibility of a candidate for the purpose of selection and appointment had to be considered with reference*



*to the last date, fixed for submission of application, unless the advertisement, inviting application, specified some other date.*

10. *In the case of U.P. Public Service Commission vs. Alpana, reported in (1994) 2 SCC 723, the Supreme Court assigned reasons as to why eligibility conditions, e.g., educational qualification, must be fulfilled on the last date, fixed for submission of application by the Commission, and has held thus:-*

*“.... Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognized there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal.”*

This view has been affirmed in the case of **Rakesh Kumar Sharma v. Govt. (NCT of Delhi)** reported in **(2013) 11 SCC 58**, there the identical issue was raised and the Court held that failure to acquired necessary qualification and submission of certificate will lead to rejection of the application. In the present case also, the situation is the same as the petitioner has failed to acquire the certificate of registration from the Bihar State Dental Council on and before the cut-off date.

In view of the above, this Court cannot unsettle the situation and cannot direct the Bihar Public Service Commission to allow the petitioner to participate in selection of the dental doctors.



With the aforementioned observation and direction, this writ application is dismissed.

(Shivaji Pandey, J)

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