

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.19278 of 2017**

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1. Himanshu Shekhar, Son of Uma Shankar Mahto, resident of Ward No.-9, Jitwarpur, Nijamat, District-Samastipur, Bihar, Pincode-848134,  
2. Yogesh Kumar, Son of Misar Prasad Mandal, Resident of Naya Nagar, rani Diyara, District- Bhagalpur, Bihar, Pincode-813222.  
3. Ranjeet Kumar, Son of Sita Ram Prasad Kushwaha, Resident of Village- Mahuahi, Murshidabad, P.O.-Bhelwa Circle, P.S.-Ghorsahan, Dipahi, Dharharwa, District-East Champaran, Pincode-845315..  
4. Neeraj Kumar, Son of Uma Shankar Mahto, Resident of Village +P.O.-Jitwarpur Nizamat, P.S.-Samastipur, District-Samastipur.  
5. Prabhash Kumar Singh, Son of Late Jagdambe Prasad Singh, Resident of Village-Aulibad, P.O.-Jhandapur, P.S. Bihpur, District-Bhagalpur.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.  
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.  
3. The Bihar Public Service Commission, through its Chairman, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.  
4. The Secretary, Bihar Public Service Commission, 15-Jawaharlal Nehru Marg Bailey Road, Patna.  
5. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

|                               |   |                                                                               |
|-------------------------------|---|-------------------------------------------------------------------------------|
| For the Petitioner/s          | : | Mr. Y.V. Giri, Sr.Adv.<br>Mr. Pranav Kumar, Adv.<br>Mr. Sumit Kumar Jha, Adv. |
| For the State<br>for the BPSC | : | Mr. Manish Kumar, AC to GP-12<br>Mr. Sanjay Pandey, Adv.                      |

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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: 16-07-2018**

Challenge in the present writ application has been thrown to Rule 4(e)(iii) part of the notification bearing memo no.16/M 1-03/2008-1282 dated 20.11.2017 (Annexure-6 to the writ application) issued under the signature of the Special Secretary,



Health Department, by which amendment has been made in Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contractual Basis and Service Conditions) Rules, 2010 (hereinafter referred to as 'the Rules, 2010'). By virtue of the amendments made in the Rules, 2010 the previous mode of selection and eligibility has been changed and a new procedure has been introduced by the respondent Health Department under which the selection of Ayush doctors is to be done on the basis of the marks secured by the candidates at university level.

It is the contention of the writ petitioners that the amendment brought vide Annexure-6 to the writ application is in contravention of the previous directions issued by the learned Single Judge of this Court in CWJC No.22835 of 2013 and the Hon'ble Division Bench judgment of this Court in Letters Patent Appeal No.696 of 2008 as contained in Annexure-2 to the writ application. The petitioners have referred the advertisement bearing no.43/2011 which was issued for selection of Ayurvedic Medical Officer of SC/ST to fill up the backlog vacancy in which, it is submitted that the mode of selection was the written examination and thereafter interview. It is the submission of the learned counsel representing the petitioners that earlier when the Health Department came out with an advertisement in the year 2013 for selection of Ayush Doctor and the



selection was to be made on the basis of marks obtained by the candidates at university level and thereafter on the basis of the interview, the advertisement was challenged before this Court in CWJC No.22835 of 2013 and the Hon'ble Court through its order dated 16.05.2014 directed the respondent Chief Secretary, State of Bihar to make alternative arrangement for holding competitive written examination for filling up the post of Ayush Doctor, ANM and Pharmacists within two weeks. The Court relied upon an order of the Hon'ble Division Bench of this Court passed in LPA No.696 of 2008. It is submitted that the procedure for selection of the Ayush Doctor on the basis of the marks secured by them at the university level and thereafter the interview was disapproved and rejected by this Hon'ble Court, thereafter the respondent Health Department has made certain amendments in Rule 4(e) of 2010 Rules and came out with an another Rule namely Rules, 2017. Now under the amended rules, the merit list is to be prepared on the basis of the marks secured at university level. Bifurcation of the marks as stated in the writ application shows as under:-

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|------------------------------------------------------------------------|----------------------------|
| <i>“(i) For marks obtained in BAMS/BUMS/BHMS – 50 marks.</i>           |                            |
| <i>(ii) For Postgraduate or higher degree</i>                          | <i>– 10 marks</i>          |
| <i>Postgraduate-5 marks,</i>                                           |                            |
| <i>Ph.D.-5 marks</i>                                                   |                            |
| <i>(iii) For experience in Government Hospitals/Pharmacy -25 marks</i> |                            |
| <i>(5 marks per year, maximum 25 marks)</i>                            |                            |
| <i>(iv) For interview</i>                                              | <i>– 15 marks.</i>         |
|                                                                        | <hr/>                      |
|                                                                        | <i>Total – 100 marks.”</i> |



Thus, the whole challenge to the amendments brought by the Health Department is based on the previous judgment of this Court.

On the other hand, a counter affidavit has been filed on behalf of the respondent nos.1 to 5 wherein it is submitted that the amended Rules, 2017 has been enacted by the Hon'ble Governor of Bihar in exercise of his powers conferred under proviso to Article 309 of the Constitution of India. It is submitted that the Rules, 2017 provides the procedure and manner of preparation of merit list. Rules, 2010 in the matter of selection of Doctors of District Ayush Medical Cadre on contractual basis as there was no specific provision for conduct of written examination. It is submitted that this Court in another matter relating to selection of Dentists under Dentist Rules, 2014 has adjudicated the similar issue by an order dated 10.04.2015 passed in CWJC No.855 of 2015 and has clearly observed that basically it is for the recruiting agency to stipulate the procedure for selecting the candidates and only when the procedure is found to be patently illegal that the Court would interfere.

We have heard learned counsel for the parties and perused the records. The whole contention of the writ petitioners are based on the Hon'ble Division Bench judgment of this Court in LPA No.696 of 2008. On going through the said judgment, we find that the



said Letters Patent Appeal was preferred for setting aside the order dated 04.06.2008 passed by the learned Writ Court wherein the learned Writ Court had directed the respondents to proceed with the consideration of cases of the applicants in terms of the original advertisement published on 19.04.2007 in response to which the petitioner of the said case has applied for appointment on contract basis for 11 months as Unani, Ayurvedic and Homeopathic doctors. As per advertisement merit list was to be prepared on the basis of the marks obtained at the university level in the concerned degree course or equivalent course, but after a lapse of more than six months from the last date for submitting applications, the State-respondents came with a corrigendum on 14.12.2007 providing for holding of a written examination in order to select the suitable candidate who had applied. The learned Writ Court was thus called upon to examine whether the written examination introduced subsequent to the last date for submission of applications in the advertisement would amount to change the method of selection. The learned Writ Court held that after the last date for receipt of applications was over and the process of selection on the basis of the marks had commenced, the criteria of written examination introduced under subsequent policy decision cannot be made applicable with respect to the advertisement in question. The Hon'ble Division Bench was informed that there was a



change in the policy and the earlier policy was revised and a fresh advertisement dated 26.03.2008 inviting fresh applications in respect of the same very post to be filled up on contract basis was already issued. The Hon'ble Division Bench in its concluding paragraph of the judgment held as under:-

*“So far as the merit of the policy requiring even persons at the age of 60 years to take written examination, cannot be examined by the court unless it is shown that such policy decision is per se arbitrary and violates constitutional guarantee. Considering the nature of the appointment which is on the basis of contract for 11 months only, and the capability of the State to formulate its policy as per its requirement, we are not persuaded to doubt the correctness of the policy.”*

We find from the judgment of the Hon'ble Division Bench that at no point of time the Hon'ble Division Bench imposed its opinion or views with regard to correctness of one or the other mode of selection. The writ petitioners are not correct in submitting before this Court that the amendment now brought by the Health Department is in the teeth of the judgment of the Hon'ble Division Bench of this Court. Similarly in the order dated 16.05.2014 passed in Civil Writ Jurisdiction Case No.22835 of 2013 the learned Writ Court has simply taken note of the directions given by the Hon'ble Division Bench of this Court in LPA No.696 of 2008. The observations of the



learned Single Judge in paragraph 6 of the order dated 16.05.2014 cannot be interpreted to mean and understand that the Hon'ble Division Bench of this Court has given any direction to make appointment on the post of Ayush doctors, ANM and Pharmacists without holding the written test or after holding the written test. As we have taken note of the facts of the case hereinabove the Hon'ble Division Bench of this Court had simply taken note of the policy decision of the department and approved the action of the department in going for a fresh advertisement for selection based on the written examination.

Learned counsel for the State has rightly pointed out that the Hon'ble Division Bench of this Court in the case of dentists where similar kind of procedure had been provided for award of marks on the basis of the marks obtained in BDS, the postgraduate or higher degrees, experience in government hospitals etc., refused to interfere with the same. In the concluding part of its judgment dated 10.04.2015 passed in Civil Writ Jurisdiction Case No.855 of 2015 (dentists case), the Hon'ble Division Bench held as under:-

*“Basically, it is for the recruiting agency to stipulate the procedure for selecting the candidates. It is only when the procedure is found to be patently illegal, that the Court would interfere. For selecting candidates, written test can certainly be treated as a good method, but there is nothing in law which*



*mandates that written test is the only method to select the candidates.”*

In view of the above, we find no merit in the writ application. It is dismissed accordingly.

**(Rajendra Menon, CJ)**

**(Rajeev Ranjan Prasad, J)**

Arvind/-

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