

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11219 of 2017

Dr. Pragya wife of Roushan Lal, resident of New Harnichak, Phulwari, P.S.
Phulwari, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Principal Secretary- General Administration Department, Govt. of Bihar, Old Secretariat, Patna.
4. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
5. The Director-in- Chief, Health Services, Bihar, Patna.
6. The Addl. Secretary, Health Department, Govt. of Bihar, Patna.
7. The Bihar Public Service Commission, 15, Jawaharlal Nehru Marg Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kripa Nand Jha, Adv.
For the Respondent-Stat	:	Mr.Pankaj Kumar-Sc12
		Mr. Kamlesh Kishore, AC to SC-12
For the B.P.S.C.	:	Mr. Zaki Haider, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 17-05-2019

The petitioner, by way of the present writ petition, has prayed for directing the respondents, especially the Bihar Public Service Commission (hereinafter referred to as “the Commission”) to issue re-advertisement by way of corrigendum for the posts of Dental Doctor and allow an opportunity to all eligible candidates including the petitioner herein to participate in the said selection process. It has been further prayed for declaring that the advertisement dated 25.3.2015 issued by the Commission is contrary to the Reservation Rules, 1991.



2. The brief facts of the case are that the petitioner having excellent academic record completed her B.D.S. Course in the year 2016. It has been stated that apart from 83 existing posts, 617 posts in dental services were created by a notification dated 20.11.2013, thus total sanctioned strength in the dental services became 700. Out of the said 700 posts, 129 posts were earmarked for promotion and 13 Dental Doctors were already working, hence 558 posts were vacant. The Government of Bihar, vide notification dated 14.10.2014 enacted the Bihar Dentist Service Rule, 2014 for regulating appointments and service conditions in the dentist service. The commission issued an advertisement dated 25.3.2015 for the remaining vacant 558 posts and applications were invited from the eligible candidates. Out of the said 558 posts, only 16 posts were earmarked for the backward class female category.

3. The learned counsel for the petitioner has submitted that the advertisement issued by the Commission dated 25.3.2015 would show that the eligibility criteria for applying for the purpose of being appointed on the post of Dental Doctor in the basic grade is that the candidate should possess BDS degree from any recognized University and should be registered under the Bihar and Orissa Medical Act, 1916. The last date for submitting the form was fixed as 30.4.2015. It is submitted that the candidates like the petitioner, who have obtained the B.D.S. degree in the year 2016, have been pre-



empted from applying for the post of Dental Surgeon under the Bihar Health Services and since all the vacant vacancies have been advertised, the petitioner herein would be precluded from obtaining employment under the Government Health Services for years to come.

4. Per contra, the learned counsel for the respondent Commission, referring to the counter-affidavit filed in the present case, has submitted that upon a requisition sent by the Department of Health, the Commission has published the advertisement for appointment as the post of basic grade Dental Surgeon under the department of Health, Government of Bihar. Referring to the requisition sent by the Government dated 27.02.2015, it has been submitted that the roster clearance has been obtained from the General Administration Department and only thereafter, the vacancies have been advertised, category wise. It has been further submitted that earlier also the Bihar Dentist Rules, 2014, issued vide notification dated 14.10.2014, was challenged before the High Court in CWJC No. 855 of 2015 and the learned Division Bench of this Court by a judgment dated 10.4.2015 had dismissed the said writ petition.

5. The learned counsel for the Respondents No.2, 4 to 6, referring to the counter affidavit filed on behalf of the said respondents, has submitted that in exercise of the power conferred by



the proviso to Article 309 of the Constitution of India, the Bihar Dentist Rules, 2014 came into force w.e.f. 14.10.2014, whereafter the requisition was sent by the department to the Commission and the Commission issued an advertisement dated 25.3.2015 inviting application from eligible candidates for making appointments on the post of Dentist (Basic Grade). It has been specifically stated that as far as the prayer of the petitioner regarding issuance of a direction upon the respondents to re-advertise the post of Dental Surgeon, for which reliance has been placed on the General Administration Department's Memo No.2342 dated 15.2.2016 which provides for 35% horizontal reservation to the female candidates, is misconceived and bereft of any merit inasmuch as the aforesaid notification of the General Administration Department dated 15/2/2016 is not effective retrospectively whereas the roster clearance in the instant recruitment process has already been done on 15.12.2014, by the General Administration Department and the vacancies relate to the period prior to the said date as well as the advertisement has also been issued prior to the aforesaid notification dated 15.2.2016. It has been further submitted that the requisition was made by the Health Department and, accordingly, the Commission has issued the advertisement dated 25.5.2015 taking into consideration the prevailing rules of reservation i.e. the Bihar



Reservation for Vacancies in posts and Services for Scheduled Case, Scheduled Tribes and other backward classes Act, 1991.

6. At this juncture, in order to be fair to the petitioner it would be relevant to discuss the judgments cited by the learned counsel for the petitioner. The learned counsel for the petitioner has referred to a judgment reported in 2000 (3) PLJR 231 (**Dr. Rabindra Kumar Singh vs. The State of Bihar & Ors.**) to contend that where examinations are held periodically, the chances are that the best of the available lot would not be appointed and the candidates, otherwise eligible would become overage, hence would suffer. At this juncture itself it may be pointed out that the said judgment was passed in the facts and circumstances of the said case wherein no recruitment had been made since the past 9 years resulting in many candidates having become over-age, but in the instant case no such pleading has been made in the writ petition to show that either the petitioner has become over-age or the recruitment is being made after lapse of several years. It may be pertinent to point out that the recruitment rules i.e. the Bihar Dental Services Rules, 2015 came into force w.e.f. 14.10.2014 whereafter the Health Department sent a requisition dated 27.2.2015 and the advertisement was issued on 25.3.2015 by the Commission, hence apparently, there is no delay, as such the said judgment rendered in the case of **Dr. Rabindra Kumar Singh** (Supra) is of no benefit to the petitioner herein. The next



judgment relied upon by the learned counsel for the petitioner is one reported in 1994(1) PLJR 41 (SC) (**State of Bihar & Ors. Vs. Secretariat Assistants Successful Examinees Union, 1986 and Ors.**), which is also distinguishable in the facts and circumstances of the present case inasmuch as firstly the said judgment was passed keeping in view the fact, situation and the circumstances of the said case and secondly, the issue involved in the said case was as to whether the vacancies available till the date of publication of the result should be filled up by the empanelled candidates.

7. The learned counsel for the petitioner has further referred to a judgment reported in (2007) 4 SCC 54 (Ashok Kumar Sonkhar vs. Union of India & Ors.), which is also of no benefits to the petitioner herein inasmuch as by the said judgment, the Hon'ble Apex Court has held that in absence of any cut off date specified in the advertisement or in the rules, the last date for filing the application must be considered as the cut off date and the eligibility of a candidate would be decided on the basis of the requisite qualification as on the said cut off date.

8. I have heard the learned counsel for the parties and perused the materials on record. The only prayer of the writ petitioner is to re-advertise the post of Dental Doctors, which have been advertised vide advertisement dated 25.3.2015 in consonance with the memo no. 2324 dated 15.3.2016 and to hold the



advertisement dated 25.3.2015 to be contrary to the Reservation Rules, 1991. First of all advertg to the issue of applicability of the notification dated 15.2.2016, issued by the General Administration Department, admittedly the same is not applicable retrospectively and moreover, the roster clearance has been taken by the Health Department from the General Administration Department on 15/12/2014 itself whereafter requisition was sent and thereafter, the advertisement has been published immediately on 25.3.2015, in pursuance to the Bihar Dental Service Rules, 2014, hence the said notification of the General Administration Department dated 15.2.2016 cannot be applied for the recruitment process under consideration in the present writ petition.

9. The second issue raised by the petitioner regarding the advertisement dated 25.3.2015 being contrary to the reservation Rules, 1991 is also devoid of any merit inasmuch as neither the petitioner has brought on record any material to show that the vacancies published by the said advertisement dated 25.3.2015 has not been categorized according to the Reservation Rules, 1991 nor any rejoinder has been filed by the petitioner to refute the stand taken by the respondents in their counter affidavit. Now, coming to the earlier submission made by the learned counsel for the petitioner to the effect that since the petitioner has passed in the year 2016 and the advertisement has been issued on 25.3.2015, the petitioner has been



pre-empted from applying for the post of Dental Doctor in the Health Services of the Government of Bihar, is required to be noticed only for the purpose of being rejected, inasmuch as firstly the petitioner was not eligible to apply in pursuance to the advertisement dated 25.3.2015, hence she has got no locus standi to challenge the eligibility conditions and secondly no writ can be issued by this Court on the basis of a hypothetical situation or probability of something happening or not happening, as has been canvassed by the petitioner.

10. For the reasons mentioned herein above, the present writ petition is devoid of any merit, hence is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
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