

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18218 of 2019

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1. Amlesh Kumar, Son of Naresh Prasad, R/o Mustafapur, Patna, District-Patna, Pin Code-804451
 2. Prem Shila Kumari, Wife of Shri Suman Kumar, R/o Ward No. 1, Sihma, Sihma Barari, District-Begusarai, Pin-851129

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar, Patna
2. Director in Chief Health Services, Health Department, Bihar, Patna
3. Bihar Technical Service Commission Patna through its Secretary
4. Chairman Bihar Technical Service Commission, Patna
5. Secretary Bihar Technical Service Commission, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16820 of 2019

1. Bajrang Lal Dangi, Son of Onkar Lal Dangi, Resident of Mohalla- 41, Dangi Mohalla, Silori, P.s.- Pidawa, District- Jhalawar (Rajasthan), Pin code- 326034.
2. Irfan Mohammed, Son of Abdul Rasheed, Resident of Village- KarvariKalan, P.S.- Bhanwargar, District- Baran, State- Rajasthan, Pin Code- 325215.
3. Sanjay Parashar, Son of Vishnu Parashar, Resident of Mohalla- Purani Police Thana, P.S.- Sapotra, District- Karauli, State- Rajasthan, Pin Code- 322218.
4. Ashish Tiwary, Son of Kailash Tiwary, Resident of Mohalla- 256 Gramjawi, P.s.- Jewi, District- Javi, State - Madhya Pradesh, Pin Code- 458441.
5. Rajendra Nagar, Son of Sitaram Nagar, Resident of Village- Rajopa, P.S.- Itawa, District- Kota, State- Rajasthan, Pin Code- 325004.
6. Ram Babu Dangi, Son of Lalchand Dangi, Resident of Mohalla- 253 Kumharaon Ka Mohalla, P.S.- Asnawar, District- Jhalawar, State- Rajasthan, Pin Code- 326021.
7. Munesh Singh Jadoun, Son of Brajendra Singh, Resident of Mohalla- Vivek Vihar Colony, P.S.- Karauli, District- Karauli, State- Rajasthan, Pin code- 322241.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.



2. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
3. The Deputy Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
4. The Secretary, Indian Nursing Council, 8th Floor, NBCC Centre, Plot No. 02, Community Centre, Okhla Phase- I, New Delhi- 110020.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16994 of 2019

1. Ramavatar Singh Tyagi, S/o Shriniwas Tyagi, Resident Village and P.O.- Kanasil, P.S.- Kaulari, Distt.- Dholpur (Rajasthan)
2. Kalpna Singh, D/o Bishwanath Singh, Resident of Katira, Ward No. 18, near B.D.O. Block, P.O. and P.S.- Ara, Distt.- Bhojpur at Ara

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Health Department, Govt. of Bihar, patna
3. The Director in Chief Health Services, Govt. of Bihar, Patna
4. The Bihar Technical Service Commission 19, Harding Road, Patna through the Secretary
5. The Secretary, the Bihar Technical Service Commission, 19, Harding Road, Patna
6. The Deputy Secretary, the Bihar Technical Service Commission, 19, Harding Road, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17100 of 2019

1. Banwari Lal Sharma @ Banawari Lal Sharma, S/o Sri Kailash Chandra Sharma, Resident of Village- Kundal, P.S.- Kolwa, District- Dausa (Rajasthan). Presently posted as Staff Nurse Grade A at Sadar Hospital Bhabua at Kaimur, District- Kaimur.
2. Shiv Shankar Sharma @ Shiv Shankar, S/o Chiranjee Lal Sharma, Resident of Village- Kundal, P.S.- Kolwa, District- Dausa (Rajasthan) Presently posted as Staff Nurse Grade 'A' at Sadar Hospital Bhabua at Kaimur, District- Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health



Government of Bihar, Patna.

2. The Secretary, Bihar Technical Service Commission, Patna.
3. The Deputy Secretary, Bihar Technical Service Commission, Patna.
4. The Chairman, Bihar Technical Service Commission, Patna.
5. Director in Chief (Nursing), Health Department, Govt. of Bihar.
6. The Civil Surgeon Bhabua, Kaimur.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18218 of 2019)

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate

For the State : Mr. Anujit Sinha, AC to PAAG-2

For the Commission : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 16820 of 2019)

For the Petitioner/s : Mr. Apurva Kumar, Advocate

Mr. Rajnish Kumar, Advocate

For the State : Mr. Mujtabaul Haque (GP-12)

For the Commission : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 16994 of 2019)

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

Mr. Kislay Raj, Advocate

Mr. Awnish Kumar, Advocate

For the Respondent/s : Mr. Pankaj Kumar (SC-12)

For the Commission : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17100 of 2019)

For the Petitioner/s : Mr. Prabhakar Singh, Advocate

Mr. Ranjay Kumar Patel, Advocate

For the State : Mr. S.D. Yadav, AAG-9

Mr. Pankaj Kumar (SC-12)

For the Commission : Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-09-2019

Counter affidavits have been filed on behalf of the respondents, which are taken on record.

2. This batch of writ applications involves a very short question as to whether a person holding B.Sc. in nursing course can be treated to be holding essential qualification for appointment by direct recruitment to the basic grade posts under Bihar Nurse Cadre Rules, 2019 (hereinafter referred to as 'the Rules'). The



Rules prescribe 'pass in GNM training course' as the minimum educational qualification for appointment to the basic grade posts, by direct recruitment. Rule 6 of the Rules lays down the requisite qualification which reads thus :-

*"6. **Qualifications.**-(1) For appointment by direct recruitment to the basic category posts, minimum educational qualifications shall be pass in General Nursing Midwifery training course of the period as determined by the Indian Nursing Council, from time to time, from a recognised institution and a certificate related thereto shall be necessary. Registration of candidates from Bihar Nurses Registration Council shall also be necessary.*

(2) For direct recruitment, minimum age limit shall be 21 years and maximum age limit shall be the same as determined reservation categorywise, from time to time, by the Government (General Administration Department):

Provided that, for the purpose of giving opportunity of appointment to the Grade 'A' Nurse appointed and working on contractual basis in the Government Health Institutions of Bihar State, on being requisite qualifications determined under sub-rule(1), the maximum age limit may be relaxed, from time to time.

(3) For the purpose of determining age, 1st August of the concerned year shall be deemed to be the cut off date.

3. For the purpose of giving due interpretation of Rule 6 of the Rules, in the background of the arguments, which have been



advanced in these matters, Rule 7 of the Rules also needs to be taken note of and is being reproduced hereinbelow :-

“7. Procedure of Recruitment.”-(i) The appointing Authority, after calculating the vacancy on the basis of position as on 1st April of the year and getting roster cleared, shall send reservation categorywise requisition to the Commission by 30th April.

(2) In view of the requisition, the Commission shall invite applications by advertising vacancies and shall prepare a merit list on the following basis :-

(a) For marks obtained in GNM course examination -60 marks.

(b) For higher course(if any) -15 marks

(c) For working experience in Government hospitals of Bihar state (5 marks per year, maximum 25 marks) -25 marks

Total- 100 marks

Explanation:- The marks to be given to a candidate for GNM course examination shall be determined by multiplying the percentage of total marks obtained in the aforesaid examination by the multiple of 0.6 For example, if a candidate has obtained 50% marks, then he will be given $50 \times 0.6 = 30$ marks.

(3) The Commission shall send merit list prepared on the basis of aforesaid sub-rule(2), and reservation categorywise recommendations in accordance with requisitioned vacancies to the Department. The Department will make the appointments after scrutiny of certificates of recommended candidates, conducting health check-up, verification of antecedents etc and after complying guidelines regarding appointment issued by the government (General Administration Department) from time to time.



4. An advertisement has been issued on 12.07.2019 by the Bihar Technical Service Commission, Patna (hereinafter referred to as 'the Commission') inviting applications for recruitment to the post of Staff Nurse Grade-A from eligible candidates. In accordance with the requisite qualification for the said post, as prescribed under the Rules, qualification of having passed GNM course has been prescribed as the essential qualification in the advertisement. In addition, the candidates are required to be registered with Bihar Nurses Registration Council, Patna.

5. The said terms of the advertisement, whereby GNM training course has been treated to be an essential qualification for consideration to Staff Nurse Grade-A post, has been challenged in the present batch of writ applications.

6. The petitioners, admittedly, do not have the certificate of having completed GNM course. It is their contention that they hold better and higher qualification than the requisite qualification prescribed under the Rules and mentioned in the advertisement of possessing certificate of GNM as they hold degree of having passed B.Sc Nursing, which is higher than Diploma.

7. I have heard Mr. S.B.K. Mangalam, Mr. Apurva Kumar, Mr. Prabhakar Singh and Mr. Abhinav Srivastav, learned



counsel for the petitioners, Mr. S.D. Yadav, learned AAG-9 for the State and Mr. Nikesh Kumar for the Commission.

8. It has been argued on behalf of the petitioners that the claim of the petitioners to be considered for appointment to the post of Staff Nurse Grade-A cannot be turned down because they hold higher and better qualification than what has been prescribed under the Rules and mentioned in the advertisement. It has been argued that over-qualification of the petitioners cannot be allowed to result in disqualification for them to be appointed against such posts for which inferior qualification of GNM training course certificate has been prescribed as the requisite qualification. It has been argued that it is wholly arbitrary and unreasonable exercise on the part of the respondents in denying altogether the right of the petitioners to be considered against the posts advertised, though they possess better qualification than what has been prescribed.

9. On the other hand, learned Additional Advocate General No. 9 appearing on behalf of State of Bihar has submitted that there being no ambiguity in the language of the Rules and the advertisement being in complete conformity with the relevant provisions under the Rules, which are statutory, the petitioners cannot question the prescription of requisite qualification for appointment to the posts, as mentioned in the advertisement. In



support of his contention he has relied on a Division Bench decision of this Court dated 18.12.2018, passed in LPA No. 1416 of 2018(Bihar State Power (Holding) Company Ltd. through its Chairman and others vs. Md. Asif Hussain and others). SLP No. 1187 of 2019 preferred against the said Division Bench decision has been dismissed by an order dated 22.01.2019, a copy of which has been brought on record by way of Annexure-C to the counter affidavit filed on behalf of the Commission.

10. Mr. Nikesh Kumar, learned counsel appearing on behalf of the Commission, supporting the stand taken on behalf of State of Bihar, has submitted that there is no discrepancy in the advertisement prescribing requisite qualification strictly in accordance with the statutory provisions.

11. I have examined the Rules and the requisite qualification as prescribed in the advertisement. I have given my anxious consideration to the submission advanced on behalf of the petitioners. The Rules have been framed under Article 309 of the Constitution of India and have thus statutory character. It is well-settled legal position that an employer is the best person to decide as to what should be the requisite qualification for appointment against a post and unless the qualification so prescribed by an authority, which is a State within the meaning of Article 12 of the



Constitution of India, is shown to be arbitrary having no nexus with the posts to which appointments are to be made, this Court exercising power of judicial review is not required to interfere.

12. Learned counsel appearing on behalf of the respondents have rightly placed reliance on the Division Bench decision of this Court in case of ***Bihar State Power (Holding) Company Ltd. through its Chairman and others vs. Md. Asif Hussain and others*** (supra). An employment notice was issued in that case for appointment of Junior Electrical Engineers. Full time three years diploma in Electrical Engineering from a recognised institute/ college was prescribed as the requisite qualification. The aspirants holding degree qualification had questioned the decision of the authorities to prescribe diploma qualification as the only qualification for appointment on the plea of the degree qualification being higher than diploma. Though the writ application was allowed by a learned Single Judge, the Division Bench interfered with the decision holding as follows :-

“Thus, it was open to the appellant employer to prescribe the qualifications and if an alteration was made as against the earlier policy the same cannot be said to be suffering from any act of arbitrariness or violation of the law laid down by the Hon’ble Apex Court. The judgments therefore relied on by the learned counsel for the respondent-



petitioners clearly prescribes the Rules which permitted a presupposition whereas in the present case no such Rule exists. The issue at hand came to be decided by a learned Single Judge of the Allahabad High Court in the case of Alok Kumar Mishra vs. State of U.P. in Service Single No. 6655 of 2016 decided on 2nd of May, 2016 and it was held after following the decisions of the Supreme Court, and consideration of the same judgments that have been cited here in the present case, that the presumption was misplaced as in order to possess a Degree in Engineering it would not be necessary to pass or possess a Diploma in Engineering. Accordingly, the proposition that the same was an in line qualification or was subsumed, was repelled. The aforesaid judgment was upheld by a Division Bench in an Intra Court Special Appeal No. 229 of 2016 decided on 31st of May, 2016. Special Leave to Appeal filed against the aforesaid judgment before the Apex Court vide Special Leave to Appeal (c) No. (s) 17219/2016 came to be dismissed on 25th of July, 2016.”

13. It is noticeable on reading of Rule 7 of the Rules that it prescribes the procedure for determining the merit of the respective candidates. The said provision has been quoted hereinabove and it can be easily seen on plain reading of the said Rule that weightage for GNM training qualification is 60 out of 100. A person, who does not have the qualification of having



successfully completed GNM training course, would apparently not be getting any point against item 1 of sub-rule (2) of Rule 7. There being no ambiguity in the language of Rule 6 of the Rules, the prescription in the advertisement laying down requisite qualification for selection cannot be said to be contrary to any provision.

14. I do not find any merit in these writ applications, which are accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2019
Transmission Date	NA

