

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19735 of 2019

Dr. Prabhat Kumar Sharma, son of late Ram Prasad Sharma resident of Naya Bazar Chowk, P.S., Town and District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
4. The Bihar Technical Service Commission, Patna through its Chairman.
5. The Secretary, Bihar Technical Service Commission, Patna.
6. The Deputy Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the State	:	Mr. Anil Kr. Verma, A.C. to AAG-9
For the BTSC	:	Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 07-11-2019

Heard learned counsel for the parties.

2. The only question which is at the core of dispute is as to whether the petitioner can claim, by way of his right, relaxation in upper age limit over and above what has been allowed in the advertisement for appointment as Medical Officer?

3. The advertisement No. 16/2019 dated 08.08.2019 published by the Bihar Technical Service Commission (hereinafter referred to as the “Commission”) invites applications for selection on the post of General Medical Officer, General Duty Sub Cadre, Clause-8 whereof, prescribes the upper age limit as on 01.08.2019.



The upper age limit for an open category candidate (male), upper age limit has been prescribed as 37 years. Sub Clause V to IX of Clause 8 of the advertisement allow relaxation in upper age limit in certain cases and the manner such relaxation is to be allowed to the candidates eligible for such relaxation. The controversy involved in the present writ application relates to sub-clause (vii) of clause 8 of the advertisement which reads thus:-

“(vii) बिहार सरकार के अन्तर्गत मात्र संविदा पर कार्यरत सामान्य चिकित्सा पदाधिकारी एवं विशेषज्ञ चिकित्सा पदाधिकारी को कोटिवार अधिकतम उम्र सीमा में 16 (सोलह) वर्षों का छूट अनुमान्य हैं, किन्तु दिव्यांग होने की स्थिति में दोनों छूट अनुमान्य नहीं होगा एवं यह छूट विकल्प आधारित होगा।”

4. It is manifest from sub clause-VII of clause 8 as noted above, that 16 years of upper age limit has been allowed category wise for Medical Officers working under the State Government of Bihar on contractual basis. Apparently, an open category candidate up to 53 years of age (37 + 16) can be considered to be eligible in terms of age, as per the advertisement, if he is working as a Medical Officer under the State Government of Bihar, on contractual basis. The date of birth of the petitioner is 21.01.1956, as has been stated in paragraph 4 of the writ application. His age as on 01.08.2019 is more than 63 years. Based



on resolution of the General Administrative Department, Government of Bihar, dated 17.09.2018 (Annexure-5), the petitioner claims that there should not have been any upper limit of age relaxation for those working on contractual basis and there ought not to have been any age bar for such Medical Officers who are working on contractual basis. According to the petitioner, the clause of the advertisement which disentitles Medical Officers working on contractual basis for being considered for selection on regular basis is, arbitrary, illegal and against the own decision of General Administrative Department of the State Government.

5. Mr. Prashant Sinha, learned counsel appearing on behalf of the petitioner has relied on resolution No. 9 of the resolutions dated 17.09.2019 (Annexure-5) of the General Administrative Department to submit that it enables relaxation in upper age limit to the extent it does not breach any statutory provision. He has submitted that Rule 13 of the Bihar Health Service Appointment and Service Condition Rules, 2013 (hereinafter referred to as the 'Rules'), also enables the State Government to relax upper age limit after recording reasons therefor. He has submitted that there appears to be no reasonable basis for relaxing the age limit up to 16 years only in favour of the Doctors working on contractual basis and for the said reason also,



this Court's interference is required by directing the State Respondents to allow all Medical Officers working on contractual basis under the State of Bihar to participate in the process of selection. Doctrines of legitimate expectation and promissory estoppel have been canvassed on behalf of the petitioner to establish his right for grant of relaxation in upper age limit.

6. Learned counsel appearing on behalf of the State of Bihar, on the other hand, while resisting the petitioner's claim has submitted that according to his own case, the petitioner has served on contractual basis for a period of 12 years and his claim to avail age relaxation for a period of more than 16 years, defies logic. He has referred to a Division Bench decision of this Court dated 02.07.2019 rendered in CWJC No. 8149 of 2017 (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other analogous cases, to bolster his contention that the petitioner cannot claim as of right to have benefit of age relaxation over and above what has been allowed, as has been mentioned in the advertisement itself.

7. I have carefully perused the pleadings in the writ petition and have given my anxious consideration to the rival submissions made on behalf of the parties. I am convinced on the basis of materials available on record that petitioner has not at all



been able to establish any legal right to enjoy age relaxation as has been claimed by him. Rule 13 of the Rules as substituted by the amendment to Bihar Health Service (Appointment and service condition) (Amendment), Rule, 2019, enables the Department to extend maximum age limit, in any transaction of the appointment, by recording reasons thereof. The Rules do not prescribe relaxation in age limit, rather it enables the Government to relax. Further, the petitioner has not at all been able to make out any case of arbitrariness or discrimination, as apparently the age relaxation has been allowed uniformly, to all aspirants.

8. Learned counsel appearing on behalf of the respondents have rightly placed reliance on the Division Bench decision by this Court in case of (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other analogous cases, wherein this Court has unambiguously held that power to relax cannot be claimed as a matter of right, and relaxation in age is the discretion of the Government and the Court cannot compel the Government to exercise the power of relaxation after rejecting the plea of “undue hardship” as was raised by the petitioners of that case.

9. It is to be recorded here that in the present writ application also, no case of hardship is made out, which expression



has been lucidly explained by the Division Bench in case of (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other analogous cases, paragraph 30 and 33 of which read thus:

“30. The other argument of undue hardship also cannot withstand the scrutiny of law, inasmuch as, if the said logic is extended then a person who may have attained more experience and would be even above the 70 years of age can always contend that his exclusion would cause undue hardship to him. A prescription of an age in Government service and the age of retirement are governed by well settled principles. It cannot be termed to be merely arbitrary simply because it is inconvenient to a person. The question of undue hardship is also misconceived, inasmuch as, the fixing of the age cap does not result in the deprivation of the writ petitioners from their livelihood. They still continue to be the doctors of the Bihar Medical Health Services Cadre and, therefore, their exclusion on account of the age cap does not render them job-less so as to destroy their expectations and hopes. The fixing of the maximum age cap of 50 years simply makes them ineligible for the teaching post



and does not in any way disqualify them to continue as an employee in the existing cadre. This, in our opinion, is neither a hardship much less an undue hardship. The entire edifice of this argument, therefore, has no legs to stand and consequently we are unable to accept the aforesaid contention on behalf of the writ-petitioners.

33. *We can only comment that the power to relax cannot be claimed as a matter of right, inasmuch as, it is not the case of the petitioners that such relaxation has been granted to identically situated persons pursuant to the impugned advertisement. There is no clause of relaxation in the advertisement as well. The power of relaxation can be exercised by the government only in cases of undue hardship depending upon the circumstances which can lead to the conclusion of an existing undue hardship. The phrase “undue hardship” involves subjectivity but it has to be rationally interpreted. This will depend upon the facts of a particular case. Hardship is something “that which is hard to bear”. It causes mental or physical fatigue or pain. It produces an oppressive feeling of injustice. Hardships are encounters on the road to fortune. But all hardships are not undue. A person chooses*



his career willingly or by a choice amongst compulsive options. In this adventure one does not get to achieve everything. One has a choice to aspire but by itself a desire or a choice is not necessarily a legal right. A compelling vested interest if chased, and if obstacles come by in the shape of a hardship, then the blame cannot be transferred on somebody else. One's own choice that may limit future aspirations is not somebody else's deliberate intent or oppression. The rule of age cap by the government is not an act of deliberate oppression or designed to put anyone to a deliberate disadvantage. The hardship complained of is not undue, and in our analysis on the facts of the present case is not a hardship at all. A prescription of age to limit an opportunity is widely accepted in all services. The power to fix it or vary it lies with the employer. If the argument is accepted then any prescription would be liable to struck down".

10. The doctrine of legitimate expectation as a ground to seek enhancement in prescribed age limit has also been considered by the Division Bench in a case of (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other



analogous cases, paragraphs 27 and 28 of which can be appliquoted as under:

“27. In our opinion, a contractual appointment may not necessarily result in any right so as to give rise to a legitimate expectation. A right is an interest which is recognized and protected in law and is also known as a legal or just claim. A person should be possessed of a right so as to enforce it and therefore in order to demonstrate and establish that there exists such a right it will have to be seen as to whether the contractual appointment results in the accrual of any such rights. A right possessed and recognized in law cannot be taken away. In our opinion, there is no such right which vested in the writ petitioners so as to give rise to a legitimate expectation to claim appointment on a regular basis or any relaxation on that count in future. A person has to have an accrued right and not a mere abstract right. It has to be capable of being enforced and not just inchoate. There are no positive recitals in the appointments of any of the petitioners on contract basis which may indicate a positive intent that they would be appointed on regular basis or would be entitled to any relaxation on



account of such appointments. Thus, their appointment on contract basis by itself does not result in any accrual of such rights. The contractual appointment of the petitioners is defined by terms and conditions contained in the contract. Any variation therein would amount to altering the terms of the contract. There is no concluded contract between the Government and the petitioners to claim regularization. The acceptance of the contractual appointment by the petitioners and their continuance does not allow them to claim status of ad hoc continuance for a substantive period or even something similar to long continuance like work charge or temporary employees. The engagements being contractual in nature, the same cannot be modified by a judicial intervention to extend any such benefit.

28. *We may also emphasize that keeping in view the theory of legitimate expectation and of hope in the broader sense the general rule is that a person is entitled to a remedy only if there is an existence of a right. Legitimate expectation is an exception to general rules. However, the action of an authority can be questioned if it defeats the consequence of a legal expectation which is a kind of a check on*



the administrative authorities so that the powers conferred on them are not exercised in an arbitrary manner. However, this legitimate expectation should be in conformity with the law and has to be a reasonable expectation. It is here that we would like to emphasize that an expectation to go even beyond the legally enforceable rights may not be the basis for claiming any benefit. A mere hope and aspiration has to be distinguished from a vested right. The Government has never assured the petitioners either in their contractual appointments or in the rules prescribing eligibility condition that they would be granted any relaxation or promising any regularization”.

11. As has been held by a Division Bench in case of (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other analogous cases, contractual appointment of the petitioner does not give rise to any legitimate expectation which cannot be termed as an interest which is recognized and protected in law. The petitioner has not been able to establish any legal right which he possessed, which could be enforced by issuance of writ under Article 226 of the Constitution.



12. In view of the discussions as above, in the light of the Division Bench Decision of this Court in a case of (Dr. Kishore Kumar Das and Others Vrs. State of Bihar and Others) and other analogous cases, I do not find any merit in this writ application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15/11/2019
Transmission Date	N.A.

