

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7220 of 2020

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1. Krishna Murari, Son of Sadanand Singh, resident of Village- Kaindi, P.S. Halsi, District- Lakhisarai.
 2. Keshawa Nand, Son of Kumoda Nand Jha, resident of Village- Nohar, P.S.- Gwalpara, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The State Health Society, Bihar Family Welfare Building, Sheikhpura, Patna through its Secretary, Health-cum-Executive Director.
5. The District Magistrate-cum-Chairman, District Health Society, Lakhisarai.
6. The District Magistrate-cum-Chairman, District Health Society Araria.
7. The Civil Surgeon-cum-Member Secretary, District Health Society, Lakhisarai.
8. The Civil Surgeon-cum-Member Secretary, District Health Society, Araria.
9. The Superintendent, Sadar Hospital, Lakhisarai.
10. The Superintendent, Sadar Hospital, Araria.
11. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar, Advocate
For the Respondent/s	:	Mr.AC to GA-8
		Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 16-10-2020 Heard learned counsel for the petitioners, State as well as Mr. Nikesh Kumar, learned counsel appearing on behalf of Bihar Technical Service Commission.

The petitioners in the present writ application have raised the grievance that although they are working on



contractual basis and the respondents have taken the decision for age relaxation, but in the process of selection of Physiotherapist/ Occupational Therapist they have not considered their candidature, as they have crossed the age of 37 years on the cutoff date i.e. 01.08.2019.

No counter affidavit has been filed on behalf of the State. On behalf of the Bihar Technical Service Commission, a counter affidavit has been filed where stand has been taken that they abide by the decision of the State Government. The modalities are fixed by the State Government and on the basis of the fixed modalities the Commission used to complete the selection process and, therefore, they have no say in the relaxation of the maximum age. Although, there is some suggestion that granting age relaxation may lead to absurd situation where the persons have worked for 16 years and in that situation the maximum age limit may go up to 53 years.

Considering the contention of the parties and also after going through the materials available on record three facts are admitted; (i) The petitioners were appointed on contractual basis as Physiotherapist/ Occupational Therapist, (ii) They are still continuing as Physiotherapist/ Occupational Therapist and (iii) No selection process was undertaken for appointment on



the post of Physiotherapist / Occupational Therapist for considerable long time.

In a situation where these petitioners are working on contractual basis as Physiotherapist/Occupational Therapist having all the requisite qualifications when there was no regular appointment at least minimum the State is required to provide one time age relaxation, if not weightage for past working experience in the selection process. Since the State fails to conduct the selection process for regular appointment and when these petitioners entered the service on contractual basis as Physiotherapist/ Occupational Therapist, they were below the age of 37 years and they are still continuing on contractual basis, at least minimum the State was required to do justice to the persons, who were working on contractual basis to consider their cases for regular appointment as Physiotherapist/ Occupational Therapist by granting one time age relaxation. It does not appeal to reason that the State who failed to conduct the selection process for regular appointment is taking plea that since I failed to conduct selection process, therefore, you have become over age while working on contractual basis and as such out of zone of consideration for regular appointment.

In All India Groundnut Syndicate Vs.



Commissioner of Income Tax, reported in **AIR 1954 Bom. 232**, Hon'ble Mr. Justice Chagla, Chief Justice has laid down the principle that one cannot take advantage of his own default, which reads as follows:

"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person we take it that the Patna High Court LPA No.1870 of 2015 dt.17-01-2018 Income-tax Department is included in that definition can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

Similar view was expressed by the Apex Court in the case of **State of Maharashtra Vs. Jagannath Achyut Karandikar** reported in **AIR 1989 SC 1133** where the Apex Court held out that one cannot suffer on account of lapse of the respondents in holding the examination regularly.

In view of the admitted fact that the petitioners are working on contractual basis as Physiotherapist/ Occupational



Therapist from the date when they were below the age of 37 years, the State is obliged to consider their cases for regular appointment by granting one time age relaxation.

Accordingly, the writ application is allowed. The respondents are directed to consider the case of the petitioners for regular appointment granting one time age relaxation having regard to the fact that they were appointed on contractual basis as Physiotherapist/ Occupational Therapist from the date when they were below the age of 37 years and they are still continuing on the post.

Necessary corrective measures must be adopted by the respondents at the earliest so that the petitioners may not be adversely affected in the selection process.

(Anil Kumar Upadhyay, J)

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