

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.778 of 2011

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1. DR.MADAN KUMAR PANDEY S/O Sri Rama Shankar Pandey, resident of Village Rampur, P.S. Nawanagar, Dist. Buxar, Presently Posted As Senior Resident , Patna Medical College and Hospital , Patna
 2. Dr. Dina Nath Prasad, S/O Late Akaloo Pd. Resident of 37, Montessari School Lane, Gandhi Nagar, P.S. S.K. Puri, Town And District Patna, Presently Posted As Senior Resident , Patna Medical College and Hospital

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR through its Chief Secretary, Secretariat, Patna
2. The Secretary, P and A Reforms Department, Govt. Of Bihar, Secretariat, Patna
3. The Principal Secretary, Health Education and Family Welfare Department, Govt. Of Bihar , Secretariat, Patna
4. The Director, Health Services, Govt. Of Bihar, Patna
5. The Secretary, Dept. Of Health, Govt. Of Bihar, Secretariat, Patna
6. The Bihar Combined Competitive Entrance Examination Board, I.A.S. Asso. Building , Near Patna Air port, Patna, through its Secretary

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prasoon Sinha,
Mr. Pavan Kumar, Advocates
For the Respondent/s : Mr.Lalit Kishor Aag1

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 14-08-2020

Heard learned counsel for the parties.

Petitioners have prayed for following reliefs:-

- a. "Issuance of direction / order / writ in the nature of writ of mandamus / certiorari setting aside Rule-6 of Annexure-8 to the extend it provides for preparation of



Panel for selection for appointment on the tenure post of Senior Resident/ Tutor by the Bihar Combined Competitive Examination Board (BCECE Board) or committee constituted by the State Govt., holding it to be illegal, arbitrary and ultra vires to Art. 320 of the Constitution of India, and also de hors to the power of the BCECE Board under BCECE Act, 1995.

- b Issuance of direction order or proper declaration that the BCECE Board has been constituted under the provisions of BCECE Act, 1995, to conduct entrance examinations for 'admission' in the Vocational Courses only, and its jurisdiction cannot be extended to make 'appointments' on teaching posts.
- c. Issuance of direction, order, writ in the nature of writ of mandamus/certiorari commanding the respondents that under the scheme of Constitution and in view of Art.320 of Constitution of India, any appointment to the civil services and posts cannot be made without consultation of the Public Service Commission, on the methods of recruitment, and principles to be followed in making appointment and making of 2008 Rule (Annexure-8) without following those mandates of the Constitution, is illegal, arbitrary, malafide and without jurisdiction.
- d. Issuance of direction, order of proper declaration that 2008 Rule (Annexure-8) has been framed by the respondents with malafide motive and intention, to defy the direction of this Hon'ble Court in Dr. Rita Sinha's case, reported in 1990(2)PLJR 243 for their own selfish end, and has brought the State Medical Colleges under constant threat of its de-recognition by the Medical Council of India, adversely affecting the medical education in the State of Bihar.
- e. Issuance of direction, order, proper declaration that 1997 Rule (Annexure-3) amended in year 2003 (Annexure-4), reverting to make appointment from the



panel of the eligible doctors of Bihar Health Service Cadre as per the earlier procedure, but on contract, amounts to misuse of power and intends to defy this Court direction in the case of Dr. Rita Sinha, reported in 1990(2) PLJR 243.

f. Issuance of direction, order, writ or proper declaration that the petitioners and other Senior resident/ Tutors appointed in the Medical Colleges of the State after being recommended by the BPSC, and dully selected by the departmental promotion committee, after being found eligible in all respect as per the directives of the MCI, have a right to continue on the post, and claim their teaching experience for appointment / promotion on the teaching posts, on the basis of their teaching experience for the period they have imparted teaching to the medical students.

g. Issuance of any other direction/directions to which the petitioners may be deemed entitled to in the facts and under the circumstances of this case.”

Counter affidavit has been filed on behalf of State of Bihar in which it has been stated that in exercise of power conferred under Article 309 of Constitution, Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rule, 2008 was framed under notification dated 10.10.2008 of the Department of Health, Government of Bihar, Patna and in pursuant to which by department letter dated 25.2.2009 the Examination Controller, BCECE Board, Patna was requested to prepare panel for appointment of Senior Resident/Tutor in the medical colleges of the State of Bihar,



however, the BCECE Patna expressed its inability for preparation of such panel and thereafter the Department of Health constituted a committee vide memo no.4.12.2009 for preparation of panel for appointment on the tenure post of senior resident/tutor for the medical colleges of the State of Bihar.

It has been further stated that the panel for appointment on tenure posts of senior residents/tutor shall be prepared subject-wise in accordance with schedule as directed by Hon'ble High Court in Dr. Rita Sinha's case which was adopted by the State Government under resolution of the Department of Health, Bihar, Patna and the committee was reconstituted vide memo dated 13.8.2010.

Panel for the year 2008-09 was finalized by the committee and the appointments were made on the tenure posts of senior resident/tutor in different departments of the medical colleges of the State of Bihar which was for a limited period of 4 years.

Counter affidavit has also been filed on behalf of Bihar Combined Competitive Entrance Examination Board, Patna in which it has been stated that Board vide letter dated 30.3.2009 addressed to the Health Department had shown its reluctance to prepare such panel as such, grievance of the petitioners against



the answering respondent does not survive.

The writ petition by efflux of time has become infructuous and is accordingly dismissed. However, if any grievances of petitioners still survives, liberty reserved to them to take recourse to such remedies as are otherwise available in accordance with law.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2020
Transmission Date	NA

