

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8187 of 2020

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1. Sanjay Kumar @ Sanjay Kumar Yadav S/o Rajbali Yadav Resident of Village- Noorpur Kala, P.S.- Jatpur, District- Ambedkar Nagar, Uttar Pardesh.
 2. Anuj Yadav S/o Sitaram Yadav Resident of 3113/IA Nirala Nagar, P.S.- Sultanpur, District- Sultanpur, Uttar Pradesh.

... .. Petitioner/s

Versus

1. State of Bihar Through Principal Secretary, Health Department, Bihar, Patna.
2. Additional Secretary Department of Health, Government of Bihar, Patna.
3. Deputy Secretary Department of Health, Government of Bihar, Patna.
4. The Under Secretary Department of Health, Government of Bihar, Patna.
5. The Deputy Secretary Bihar Technical Service Commission, Bihar, Patna.
6. The District Magistrate Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Ms.Shilpi Keshri, Advocate
For the Respondent/s : Mr. Ajay Behari Sinha, GA 8

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 12-10-2020 As of now the Courts have not resumed normal physical hearing, the matter has been listed today for consideration through Video Conferencing.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard learned Counsel for the petitioners and the learned Counsel for the State.

The petitioners applied for appointment to the post of Staff Nurse (Male) Grade 'A' pursuant to Advertisement No. 2 of 2019 issued by Bihar Technical Service Commission (BTSC for short).



The case of the petitioners is that being candidates for unreserved (general)_ category vacancies they have participated in the selection process. Counselling took place on 4th February 2020. The cut off marks as per pleadings in the writ petition was 49.537. The petitioners have not been declared selected.

In para 17 of the writ petition the petitioners have asserted that if they had been informed at the time of counselling that pay slip in support of the work performed by them earlier, and for which they were claiming experience, was required to be given, they would have done so at the time of counselling itself. In respect of both the petitioners it is also asserted that as per their own assessment they ought to have been granted marks above the cut off prescribed. By making such assertions they seek a direction from this Court to consider their case for appointment.

Annexure 9 series are the representations claimed to have been submitted by the petitioners. From the representation of petitioner No. 1 at page 49 of the brief it is apparent that pay slip in support of experience at Sadar Hospital, Kaimur has been issued on 18.8.2020 by the Incharge Primary Health Center, Chand. As late as on 19.8.2020 the petitioner has represented, seeking more time for submitting the pay slip in the office of BTSC asserting that the Civil Surgeon would be issuing the pay slip. This representation in August 2020 to the effect that pay slip is yet to be issued, belies the claim/assertion in para 17 of the writ petition that the petitioners would have submitted the pay slips at the time of counselling, which had taken place much earlier i.e. in February 2020.

Two out of the three representations, submitted by petitioner No. 2, copies of which are also part of Annexure 9 series, at page 52 & 55 of the brief, are undated. All three representations alleged to have been submitted by petitioner No. 2 do not bear any receiving. Even if the same had been received, this Court would



observe that on basis of self serving assumption of the petitioners in respect of the marks, that they expect, they cannot be permitted to invoke the writ jurisdiction for issuance of a direction for consideration of their claims for selection.

Mr. Ajay Behari Sinha, learned Counsel appearing for the respondent State, submits that the petitioners have not raised any specific malafide. The process of selection is uniform for all candidates. The result of the process of selection is outcome of a process at various stages by various persons. The petitioners have not been able to make out any case of discrimination or malafide. The petitioners have not made out any case for issuance of a writ in their favour in the process of selection. Having failed to secure the cut of marks they have rightly not been selected.

The pleadings and documents placed on record, do not inspire any confidence in the claims raised by the petitioners. No infirmity in the process of selection has been shown, on basis of which the petitioners can allege that they have wrongly been ousted for consideration. Merely on the basis of petitioners' assumption that they ought to have been given marks higher than cut off marks (49.537), this Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to issue a direction to the authorities for considering their candidature.

The writ petition is devoid of merit and the same is dismissed.

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(Madhuresh Prasad, J)

