

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22568 of 2019

=====

Kaushlendra Prasad, son of Rajendra Prasad, resident of Village- Jogiya, P.O. and Police Station- Chandi, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. The Special Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, New Secretariat, Patna.
4. The Deputy Director (Administration), Health Services, Government of Bihar, New Secretariat, Patna.
5. The Deputy Director (T.B.), Health Services, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar Verma, Adv.
For the Respondent/s	:	Mr.Mujtabaul Haque (GP-12)
		Mr. Mirtunjay Kumar, AC to GP-12

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 13-01-2020

Heard learned counsel for the parties.

2. This writ application has been filed seeking quashing of a communication dated 18.09.2019 sent to the petitioner by the Special Secretary, Health Department, Government of Bihar vide Memo No. 860(11) whereby he has been informed about rejection of his claim for appointment as BCG Technician, though recommended by the Bihar Public Service Commission (hereinafter referred to as 'the Commission').

3. Facts are not at all in dispute. The petitioner is one of the appointees of infamous appointments made by Dr. A.A.



Mallick, the then Deputy Director, Incharge of Tuberculosis Centre, Health Department, Government of Bihar, who had made 6000 appointments, mostly against non-existent posts. Their appointments were subsequently cancelled and the matter had travelled up to Supreme court against dismissal of the employees who were appointed by Dr. Mallick. While refusing to interfere with dismissal of the employees, the Supreme Court in its decision in case of *Ashwini Kumar and others vs. The State of Bihar and others* reported in (1997) 2 SCC 1 had issued certain directions. It was in the light of the said direction of the Supreme Court that the Commission had undertaken an exercise of selection leading to issuance of advertisement No. 01/1997. It transpires further that the Commission finally recommended a panel for appointment of 321 persons and sent it to the State Government. Petitioner's name figured at serial no. 297, which is not in dispute.

4. It appears that after recommendations were made by the Commission, the State Government appointed 109 persons only from the panel mainly on the ground that only they had the requisite qualification as they had obtained training from two State Government owned centres located at Patna and Darbhanga. Other recommendees were not appointed by the State Government. The issue as to whether the candidates who had obtained training from other centres came up before this Court and finally came to be



decided by an order dated 10.09.2014, passed in Civil Review No. 133 of 2003, a copy of which has been brought on record by way of Annexure-3 to the writ application. The Court directed the State Government to appoint left over candidates also, of the recommended panel of 321 persons. It further transpires that a contempt petition was also filed giving rise to MJC No. 1711 of 2016 alleging disobedience of the order of this Court dated 10.09.2014 in Civil Review No. 133 of 2003. Thereafter, the State Government published a notice dated 26.04.2018 for appointing left over candidates who were recommended by the Commission including this petitioner. An office order was issued on 22.02.2019 asking the candidates to appear before the Director-in-Chief, Health Services, Government of Bihar on 25.02.2019 with certain documents, namely :-

- “(i) Original copies of all certificates of educational qualification.*
- (ii) Original certificate in relation to the claim for reservation.*
- (iii) Original certificate that the candidate does not belong to creamy layer if he/ she was claiming reservation on the basis of Backward Class or Extremely Backward Class.*
- (iv) No objection certificate from the existing employer if the candidate was employed.*
- (v) Original Admit Card issued by the Bihar Public Service Commission.*
- (vi) Permanent resident certificate issued by the competent authority.*



(vii) Self-attested passport size two photographs.

(viii) An affidavit issued by the 1st Class Executive Magistrate to the effect that all the documents submitted were correct and there was no case pending in any police station or court against a candidate and there was nothing adverse about his/ her character.

(ix) Original copy of experience/ training certificate and other documents submitted before the Commission.”

5. This is not in dispute that the petitioner appeared with the documents before the Director-in-Chief, Health Services as required in the notice dated 22.02.2019 and he submitted all the documents as required except the following two :-

“(i) The original Admit Card issued by the Bihar Public Service Commission and

(ii) Original certificate of having passed matriculation examination.”

6. It is the petitioner's case that the advertisement was issued in 1997 and after lapse of more than 20 years, he had lost the original Admit Card issued by the Commission somewhere and was not traceable. It is his further case that when he participated for counselling in terms of the said order dated 22.02.2019, he was not in possession of the original matriculation certificate, which was also lost. He had submitted, however, the photostat copy of the matriculation certificate and had sought a short time before the



Director-in-Chief for submitting the original certificate of having passed matriculation examination.

7. The petitioner has been denied appointment only on the ground that at the time of counselling he could not submit the original Admit Card and original matriculation certificate. The petitioner is not disputing that on the date of counselling the said documents were not there with him. He, however, contends that he has obtained a duplicate, authentic certificate of having passed the matriculation examination from Bihar School Examination Board.

8. Considering the facts and circumstances as noted above, this application is disposed of with a direction that let the Director-in-Chief, Health Services consider the petitioner's case afresh and if he produces his original of the duplicate certificate of having passed matriculation examination, after due verification, he shall pass appropriate orders in accordance with law. The court directs that the Director-in-Chief shall not insist on the petitioner submitting original Admit Card, which, according to him, has been lost. It will, however be open to the Director-in-Chief to make necessary inquiries and verifications to ensure the petitioner's candidature and his *bonafide*. The entire exercise must be concluded within one month from the date of receipt/ production of a copy of this order.



9. If, in any case, the Director-in-Chief rejects the petitioner’s claim, he will have to pass a reasoned speaking order, keeping in mind the observations of this Court as noted above, within one month.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2020
Transmission Date	NA

