

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8248 of 2020

Dr. Pratyush Parag Son of Dr. Harishankar Mishra Resident of Usha Hari, VIP
Road, Laheriasarai, Darbhanga, Balbhadaurpur, Darbhanga, Bihar- 846001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Government of Bihar, Patna.
2. The Additional Secretary, Department of Health, Government of Bihar,
Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

Appearance:-

For the Petitioner:- Mr. Rohit Mishra, Advocate

For the State :- Mr. Kamlesh Kishore, AC to SC-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 05.08.2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed seeking the following reliefs:-



“(i)For directing the concerned respondent to issue appointment letter in favour of the petitioner, to be appointed on the post of Senior Resident/Tutor, as the persons above the petitioner, in the panel list have not joined.

(ii) For directing the concerned respondent to remove all those Senior Resident/Tutor who have completed 3 years tenure as Senior Resident. Because as per the “Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008” and subsequent upon “Senior Resident/Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion (Amendment), Rules, 2013”, (hereinafter referred to as ‘the rules’), the tenure of the said post is only for three years.

(iii)For directing the concerned respondent to remove/not to take into consideration the persons who have already completed or have done/produced experience of senior resident/tutor once earlier.

(iv) For directing the concerned respondent to take all the vacancies in consideration accruing till 31.12.2020, for the purposes of filling the post of the Senior Resident/Tutor from the panel list prepared through/by the advertisement no. 8 of 2019 of Health Department , Government of Bihar. Because as per the rule (Annexure-“C” to the rule) the vacancy accruing till 31.12.2020 have to be filled up by the



2019 panel.

(v) For directing the concerned respondent to allocate 20% post for candidates who have acquired post graduate degree from any recognized institution, outside the State, as has been stipulated in advertisement itself.

(vi) For directing the concerned respondent to prepare a fresh panel list taking into consideration all aforesaid aspect into consideration.”

3. The brief facts of the case are that an advertisement bearing Advertisement No. 8 of 1990 was published by the Health Department, Government of Bihar for appointment on the post of Senior Resident / Tutor dated 03.10.2019. As far as the petitioner is concerned, he is stated to have completed his MBBS course in the year 2015 from Choudhary Charan Singh University, Meerut and had then obtained the post graduate degree i.e. Master of Surgery from Tirthankar Mahabir University in the year 2019 as also had obtained the degree of M.S. in Orthopaedics from the said University. The petitioner had applied in pursuance to the aforesaid advertisement on 16.10.2019, for being appointed in the department of Orthopaedics.

4. The learned counsel for the petitioner has submitted that a



merit list of eligible candidates was published, as against three vacancies under the unreserved category in the Orthopaedics Department, out of which one vacancy was earmarked for a female candidate. It is submitted that as far as the petitioner is concerned, he has been shown to be at serial no. 6 in the merit list and apart from him three people in the unreserved category were placed above him i.e. at serial nos. 2, 3 & 5. The learned counsel for the petitioner has also submitted that the candidates at serial nos. 2 & 3 who were above the petitioner in the panel under the unreserved category were appointed vide letter dated 06.02.2020, however, both of them did not join, even after extension of time being granted to them. The learned counsel for the petitioner has referred to the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 (hereinafter referred to as the 'Rules, 2008'), more particularly to Rule 6 (b) to submit that any person, who has been appointed on any tenure post can hold the post only for one term. The learned counsel for the petitioner has lastly submitted that since the candidates at serial nos. 2 & 3 of the provisional merit list had failed to join, the appointment letter was required to be issued in favour of the petitioner but despite him having filed representation dated 15.01.2020 and 08.06.2020



(Annexure-7 to the writ petition), the respondents have failed to take any decision.

5. Per contra, the learned counsel for the State Shri Kamlesh Kishore, AC to SC-12 has submitted, by referring to the counter affidavit filed in the present case that the validity of the 2019 panel, in which the name of the petitioner has been depicted, has already expired on 31.12.2020, hence no relief can be granted to the petitioner and his claim has become redundant. It has been further submitted that on account of non joining of doctors on various posts of senior Resident/Tutor, in different subjects, despite extending the period for acceptance of their joining, the Health Department, Government of Bihar, had then gone ahead and has already made appointments from amongst the panel/wait list candidates in five subjects including in the Department of Orthopaedics vide notification dated 24.08.2020, hence the two posts under the unreserved category in the Department of Orthopaedics have now stood filled. It is also submitted that the Health Department, Government of Bihar vide letter dated 25.08.2020 has already sent requisition to the Examination Controller, Bihar Combined Entrance Competitive Board, Patna for initiating fresh selection process and sending fresh recommendations for making appointment on the post of senior



Resident/Tutor.

6. I have heard the learned counsel for the parties and gone through the materials on record from which I find that the factum of two candidates having been appointed from the panel/ waiting list, so as to fill the two posts in the Orthopaedics Department under the unreserved category, has not been denied by the petitioner either by filing a rejoinder affidavit or while making submissions across the Bar at the time of hearing of the present case, hence it is apparent that there is no vacancy left as against the aforesaid Advertisement No. 8 of 1990 as far as the Department of Orthopaedics is concerned, qua the unreserved category, for which the petitioner had applied, and moreover the panel has also expired on 31.12.2020 as also the Health Department has already sent requisition for initiating fresh selection process and sending fresh recommendation for appointment on the post of senior Resident/Tutor, thus I find that the petitioner has got no legally sustainable claim for being appointment on the post of senior Resident/Tutor under the unreserved category in the Department of Orthopaedics. Consequently, the present writ petition stands dismissed, being devoid of any merit.

7. It is needless to state that dismissal of the present writ



petition shall in no manner be an impediment for the petitioner to participate in the fresh selection process.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	22.07.2021
Uploading Date	05.08.2021
Transmission Date	

